A GUIDE

TO

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920

A Complete Exposition of the Act, embodying the Decisions of the English, Scots and Irish Courts

BY

W. E. WILKINSON, LL.D. (Lond.)

A Solicitor of the Supreme Court

SECOND EDITION

LONDON:

THE SOLICITORS' LAW STATIONERY SOCIETY LIMITED

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PREFACE.

THE Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, has now been in force sufficiently long for the Courts to have decided many points which its provisions left obscure.

In the application of its provisions, it must always be remembered that the Act is not an "enabling" but a "restrictive" measure, preventing landlords and mortgagees from exercising certain powers which otherwise they would be entitled to exercise (see *Goodwin* v. *Rhodes*, (1921) 2 K.B. 182).

Attention is directed to the provisions of s. 13 (3), by which the application of the Act to premises used solely for business, trade or professional purposes or for the public service ceases on the 24th June, 1921.

The Author was gratified at the encouraging reception which was accorded to the First Edition of this Guide. In the present edition the scope of the work is considerably enlarged: all reported cases decided under the Act and, as far as now relevant, under the repealed Acts are dealt with and the application of the Act to Scotland and Ireland is considered.

The text of the Act and the Rules, and of the repealed Acts will be found in the Appendices.

The Author gratefully acknowledges the permission courteously granted to him by the Proprietors and Publishers of "The Law Journal Reports," "The Law Times Reports," "The Times Law Reports," and "The Irish Law Times Reports," to make use of the head-notes to the cases therein contained.

All decisions on the Act reported up to 18th June, 1921, are noted. The decision in the case of *Glossop and Another* v. *Ashley*, referred to on p. 20, has been affirmed by the Court of Appeal (June 13th).

W. E. WILKINSON.

44 BEDFORD ROW, W.C.1.
20th June, 1921.

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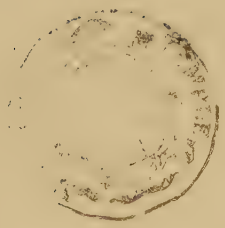

CHAPTER I.

Application of the Act.

(1) General Scheme of the Act.

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17), which came into force on the 2nd July, 1920 (the date on which it received the Royal Assent), is to continue in force, as to dwelling-houses until the 24th June, 1923 (in Scotland until the 28th May, 1923), and as to premises used solely for business, trade or professional purposes or for the public service, until the 24th June, 1921 (in Scotland until the 28th May, 1921).

The Act consolidates and amends the law with respect to the increase of rent and the recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of, mortgages of such premises. The general scheme of the Act is similar to that of the earlier Acts, which have been repealed. It fixes a "standard rent" for certain classes of dwelling-houses and a "standard rate of interest" for mortgages on such premises, prescribes what increases in the rent or rate of mortgage interest may be charged, and makes it impossible to dispossess a tenant or call in a mortgage, except on certain specified grounds, so long as the proper rent or rate of mortgage interest continues to be paid.

The Act applies to the whole of the United Kingdom, though in its application to Scotland and Ireland it is subject to the modifications set out in s. 18 (see *infra*, pp. 88-93).

The earlier legislation on the subject consisted of the following Acts or portions of Acts :—

(1) The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97) ;

(2) The Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25), ss. 4, 5 and 7 ;

(3) The Increase of Rent, &c. (Amendment) Act, 1918 (8 Geo. 5, c. 7) ;

(4) The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (9 Geo. 5, c. 7) ;

(5) The Increase of Rent, &c. (Amendment) Act, 1919 (9 & 10 Geo. 5, c. 90).

The Act of 1918 was repealed by the second of the two Acts of 1919, and the remaining Acts are repealed by the present Act.

The original Act (the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915), applied (with certain exceptions) to a house or a part of a house let as a separate dwelling where *either* the annual amount of the standard rent *or* the rateable value of the house or part of the house did not exceed—

(A) in the case of a house situate in the Metropolitan Police District (including the City of London), £35 ;

(B) in the case of a house situate in Scotland, £30 ; and

(C) in the case of a house situate elsewhere, £26 (s. 2 (2)).

The houses dealt with by this Act are hereinafter referred to as "1915 Act houses."

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, by s. 4, extended the operation of the original Act (with certain exceptions) to houses or parts of houses let as separate dwellings where—

(A) in the case of a house situated in the Metropolitan Police District (including the City of London), *both* the annual amount of the standard rent *and* the rateable value of the house or part of the house exceeded £35, and *neither* exceeded £70 ;

(B) in the case of a house situated in Scotland, *both* the annual amount of the standard rent *and* the rateable value of the house or part of the house exceeded £30, and *neither* exceeded £60 ;

(C) in the case of a house situated elsewhere, *both* the annual amount of the standard rent *and* the rateable value of the house or part of the house exceeded £26, and *neither* exceeded £52.

The houses dealt with by this Act are hereinafter referred to as "1919 Act houses."

In the case of 1919 Act houses (i) an increase of rent or mortgage interest made on or before the 25th December, 1918, remained effective and binding (1919 Act (No. 1) s. 4 (*i*)), but (ii) an increase made after the 25th December, 1918, was, as from the 4th March, 1919, only effective and binding in so far as it did not exceed 10 per cent. of the standard rent or $\frac{1}{2}$ per cent. of the standard rate of interest as the case might be (1919 Act (No. 1) s. 4 (*ii*)).

It will be observed that while extending the operation of the Act of 1915 to higher-rented houses, the Act of 1919 also adopted a different criterion of value in the case of houses then for the first time brought within the restrictions imposed by the earlier Act. The Act of 1915 applied to the houses comprised therein if *either* the standard rent *or* the rateable value did not exceed the figures above mentioned. The Act of 1919, however, did not bring the higher-rented houses within the restrictive provisions of the earlier Act unless *both* the standard rent *and* the rateable value did not exceed the amounts specified in s. 4 thereof (*supra*). In other words, such premises did not come under the Act of 1919 if *either* the standard rent *or* the rateable value thereof exceeded the limits mentioned.

The necessity of satisfying the double standard of value in the case of the higher-rented houses occasionally produced a curious result. Thus, if there were two houses in London exactly similar in all respects and each of the rateable value of (say) £48, the standard rent of the one being (say) £55 per annum, the tenant paying rates, and the standard rent of the other being £75 per annum, the landlord paying rates, the former house would have been within the Acts (since it satisfied the double standard of value), but the latter would not, as, although the rateable value was under £70, the standard rent exceeded that amount (see *Westminster and General Properties and Investment Company and Another* v. *Simmons* (1919), 35 T.L.R. 669) ; *Isaacs* v. *Tittlebaum*, (1920) W.N. 29 (*infra*, p. 20).

The present Act reverts to the method of fixing the limits adopted in the Act of 1915, and, while extending the provisions of the earlier Acts to houses of still higher rentals, affords protection if *either* the standard rent *or* the rateable value does not exceed the prescribed limits. In other words a house is not excluded from the Act unless *both* the standard rent *and* the rateable value exceed the limits mentioned in s. 12 (2).

(2) Premises within the Act.

For the purposes of the Act premises may be divided into (A) dwelling-houses and (B) business premises.

(A) *Dwelling Houses.*

Except as hereinafter mentioned (*infra*, pp. 9-15), the Act applies to a house or a part of a house let as a separate dwelling, where *either* the annual amount of the standard rent *or* the rateable value does not exceed :—

(A) In the Metropolitan Police District (including the City of London) ..	£105
(B) In Scotland	£90
and	
(C) Elsewhere	£78.

Every such house or part of a house is to be deemed to be a dwelling-house to which the Act applies (s. 12 (2)).

Even a single room or a flat, if the subject of a separate letting is a dwelling-house within the Act.

It follows from the definitions of "standard rent" and "rateable value" in s. 12 (1) (*a*) and (*e*) of the Act (*infra*, pp. 19, 21) that the question whether or not particular premises are within the Act depends upon whether on 3rd August, 1914, the rent or rateable value thereof was under the limits specified in s. 12 (2) (*supra*). But it must be remembered that the standard rent only applies to a building which remains the same building (*Phillips* v. *Barnett* (1921), 37 T.L.R. 687, per Bray, J., at p. 688).

Where there is one letting of two flats at one entire rent, the letting is not divisible so as to bring each of the two flats within the limits of rent below which dwelling-houses are brought within the Act (*Rider* v. *Rollit* (1920), 36 T.L.R. 687).

There is nothing in the Act requiring a tenant to be in actual physical occupation of the house (*Collis* v. *Flower and another*, (1921) 1 K.B. 409, *infra*, p. 16). Consequently the tenant of an unfurnished house who has sub-let the premises furnished at a profit is not deprived of the protection of the Act, although as between himself and the sub-tenant the provisions of s. 12 (2) (*i*) (*infra*, p. 9) would apply.

"Rateable value" in the Act means net and not gross rateable value (*Waller & Son, Limited* v. *Thomas*, (1921) 1 K.B. 541).

For places comprised in the Metropolitan Police District, *see* Appendix, p. 98.

The following table gives the scope of the earlier Acts and of the present Act :—

	1915 Act. Houses.	1919 Act. Houses.	1920 Act. Houses.
Metropolitan Police District (including the City of London).	Standard rent or rateable value not exceeding £35.	Both standard rent and rateable value exceeding £35 and neither exceeding £70.	Standard rent or rateable value not exceeding £105.
Scotland.	Standard rent or rateable value not exceeding £30.	Both standard rent and rateable value exceeding £30 and neither exceeding £60.	Standard rent or rateable value not exceeding £90.
Elsewhere.	Standard rent or rateable value not exceeding £26.	Both standard rent and rateable value exceeding £26 and neither exceeding £52.	Standard rent or rateable value not exceeding £78.

Illustrations.

(1) The standard rent of a house in London is £110 per annum, but the rateable value is £100. The house is within the Act.

(2) A block of flats is rated at £400, but the standard rent of each flat is under £105 per annum. Each flat is within the Act.

(3) A building let as a garage with living rooms over it, occupied in the ordinary course by the tenant's chauffeur, was held by Lush and Shearman, JJ., to be a dwelling-house within the Acts of 1915 to 1919 (*Callaghan* v. *Bristow* (1920), 36 T.L.R. 841).

Where the Act has become applicable to any dwelling-house or any mortgage thereon, it continues to apply thereto whether or not the dwelling-house continues to be one to which the Act applies (s. 12 (6)).

Thus, a house of which the standard rent is £120 but the rateable value is £100 continues within the Act, although the rateable value is increased to £110.

The Act is not limited to particular tenancies but refers to the rent of a house generally, and applies irrespective of any change of tenancy. As was said of the Act of 1915, "the Act having once applied continues to apply whether there has been a change in the character of the occupation or not" (*King* v. *York* (1919), 88 L.J., K.B. 839, per Lush, J., at p. 840). The Act "applies

to objects, not to persons ; it operates *in rem*, and not *in personam* ; and it stereotypes the rent of the particular house in question " (*King* v. *York* (*supra*), per Sankey, J., at p. 840 ; see also *Roberts* v. *Poplar Assessment Committee* (1921), 37 T.L.R. 688 ; *Connolly* v. *Whelan* (1920), 54 I.L.T. 18).

But if by reason of substantial structural alterations the character of an existing building is so entirely changed that the building becomes a different thing, the provisions of s. 12 (6) of the Act (*supra*) do not apply. The standard rent only applies to a building which remains the same building (*Phillips* v. *Barnett* (1921), 37 T.L.R. 687, *infra*, p. 11).

Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling are, for the purposes of the Act, to be treated as a part of a dwelling-house let as a separate dwelling (s. 12 (8)).

Where possession has been taken of any dwelling-houses by a Government Department during the war, under the Defence of the Realm Regulations, for the purpose of housing workmen, the Act applies to such houses as if the workmen in occupation thereof at the passing of the Act were in occupation as tenants of the landlords of such houses (s. 12 (10)).

This clause is intended to protect the tenants of houses which during the war were acquired by the Admiralty, the War Office, and other Government Departments for purposes connected with the war.

(B) *Business Premises.*

For the purposes of the Act business premises may be divided into two classes :—

(i) Residential business premises (*i.e.*, business premises which are let with and form part of a dwelling-house (s. 12 (2) (*ii*)) ; and

(ii) Premises let and used solely for business, trade, or professional purposes, or for the public service (s. 13 (1)), *e.g.*, lock-up shops, offices, post-offices, etc. (see *Laird* v. *Graves* (1921), 55 I.L.T. 55).

(i) Residential business premises come under the general provisions of the Act relating to dwelling-houses, it being

provided that the application of the Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes (s. 12 (2) (*ii*) ; see also *Waller and Son, Limited* v. *Thomas* (1921), 37 T.L.R. 325 ; *Roberts* v. *Poplar Assessment Committee* (1921), 37 T.L.R. 688 ; *Laird* v. *Graves* (1921), 55 I.L.T. 55).

It might well seem that " the true test to apply, to see whether a building is a dwelling-house or business premises, is to ascertain the dominant purpose and principal user of the premises. One might well have thought that the dominant purpose and object of a public-house was to carry on the business of a licensed victualler, and that the residence of the occupants was an adjunct of the business. One might well have thought that ; one might, on the other hand, have said that business premises were none the less business premises because there were some rooms attached or there was a small house attached necessary for the purpose of carrying on the trade " (*Waller & Son, Limited* v. *Thomas* (1921), 37 T.L.R. 325, per McCardie, J., at p. 329). This is not the case. Where a shop or office is part of the dwelling-house of the person who lives there, the whole premises, including the shop or office, are regarded as a dwelling-house. Business premises are a dwelling-house within the general provisions of the Act, if any portion, however small, is used as a dwelling-house. They do not " cease to be a dwelling-house merely because business is being carried on in the same premises " (*Laird* v. *Graves* (1921), 55 I.L.T. 55, per Molony, L.C.J., at p. 56). " The premises are a dwelling-house irrespective of whether they are also used for other purposes " (*Epsom Grand Stand Association Limited* v. *Clarke* (1919), 35 T.L.R. 525, per Bankes, L.J., at p. 526).

The Act of 1915 did not contain any words similar to those in s. 12 (2) (*ii*) of the present Act (*supra*). But in *Epsom Grand Stand Association, Limited* v. *Clarke* ((1919), 35 T.L.R. 525), where the point arose whether licensed premises occupied partly as a dwelling-house and partly as a public-house were a dwelling-house within the scope of the Act of 1915, Bankes, L.J., said (at p. 526 of the Report) : " The premises in the present case were let for occupation under an agreement. The defendant and his family and servants had continually lived on the premises, and their residence was in accordance with the terms of the agreement. Was this a dwelling-house ? The house was dwelt in, and it was let to the defendant for that purpose. In the fullest

sense it was a dwelling-house, and none the less so because it was also a public-house . . . The object of the Legislature was to include all houses which were occupied as dwelling-houses, irrespective of whether the premises were also used for other purposes. They came within the statute, although part of the premises might be used for other purposes."

In *Ellen* v. *Goldstein* ((1920), 89 L.J., Ch. 586) it was held by Russell, J., that a shop and bakehouse with two floors of residential premises were a dwelling-house within the Acts of 1915 and 1919, and that a supplemental agreement to pay a weekly sum in respect of the use of certain fixtures did not constitute a demise of the business premises so as to make the total rent above the limit prescribed by the Act of 1919.

Section 12 (2) (*ii*), of course, now makes the position beyond doubt. In *Waller & Son, Limited* v. *Thomas* ((1920), 37 T.L.R. 325) a public-house was held by Lush and McCardie, JJ., to be a dwelling-house within the general provisions of the Act rather than within the specific provisions of s. 13 as to business premises. (See also *Roberts* v. *Poplar Assessment Committee* (1921), 37 T.L.R. 688 ; *Laird* v. *Graves* (1921), 55 I.L.T. 55.)

A house occupied partly as a school is a dwelling-house (*Stephens* v. *Tatham* (1919), W.N. 334).

(ii) The Act applies to the second class of business premises (namely, those used solely for business, trade or professional purposes or for the public service) as it applies to a dwelling-house, and as though references to " dwelling-house," " house," and " dwelling " included references to any such premises, but in its application to such premises the Act has effect only until the 24th June, 1921, and is subject to certain modifications hereinafter mentioned (s. 13 (1), (3) ; see *infra*, pp. 27, 50, 53, 68, 69 ; see also *Laird* v. *Graves* (1921), 55 I.L.T. 55.)

The application of the Act to such premises as aforesaid does not extend to a letting or tenancy in any market or fair where the rent or conditions of tenancy are controlled or regulated by or in pursuance of any statute or charter (s. 13 (2)).

For the position on the expiration of the Act, see Chapter IX.

(3) Premises not within the Act.

The Act does not apply :—

(1) To a dwelling-house bona fide let at a rent which includes payments in respect of—

(i) Board,

(ii) Attendance, or

(iii) Use of furniture

except as provided by ss. 9 and 10 (s. 12 (2) (*i*)), *infra*, pp. 67-69 ; see also *Sloane* v. *Cooke* (1919), 53 I.L.T. 209.

With the exception of the provisions of ss. 9 and 10, therefore, the Act does not apply to furnished premises. On the expiration of the tenancy of such premises, the landlord may re-take possession, if he can do so peaceably (cf. *Hemmings and Wife* v. *Stoke Poges Golf Club* (1919), 36 T.L.R. 77), and if he takes proceedings for ejectment, the provisions of s. 5 of the Act (*infra*, Ch. IV) have no application.

In *Wood* v. *Wallace* ((1921), 90 L.J., K.B. 319) a tenant agreed to pay the yearly rent of £100 for a flat in the Metropolitan Police District and also to pay 10s. weekly throughout the tenancy for services. *Held*, that under the particular agreement the parties had not purported to make the 10s. per week rent or part of rent and had not done so, although payments for attendance might in certain cases form part of the rent within the meaning of the Act ; and that inasmuch as the rent was not inclusive but exclusive of the stipulated payments for attendance, s. 12 (2) (*i*) of the Act (*supra*) did not apply. The rent was, therefore, under the limit of £105.

(2) To a house let together with land other than the site of the house. But for the purposes of the Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one-quarter of the rateable value of the house, be treated as part of the house (s. 12 (2) (*iii*)).

The " curtilage " test mentioned in the Act of 1915, s. 2 (2), is dropped (cf. *Scott* v. *Austin* (1919), 122 L.T. 235).

The result is that where the rateable value of land held with a house is less than one-quarter of the rateable value of the house, the land will be deemed to be part of the site of the house and both house and land will be within the Act ; but where the

rateable value of such land equals or exceeds one-quarter of the rateable value of the house, the land will not be deemed to be part of the site, and both house and land will be outside the Act.

Illustrations.

(1) A house of the rateable value of £45 a year is let, together with land of the rateable value of £10 a year. The rateable value of the land being less than one-quarter that of the house, both house and land are within the Act.

(2) A house of the rateable value of £40 a year is let, together with land of the rateable value of £12 a year. The rateable value of the land being more than one-quarter that of the house, both house and land are outside the Act.

The term "house" in s. 12 (2) (*iii*) (*supra*) probably includes, besides the actual dwelling-house, premises connected with it, such as the adjoining outbuildings, stable and garden (*Wellesley* v. *White*, (1921) 2 K.B. 205).

"Land other than the site of the house" in s. 12 (2) (*iii*) (*supra*) includes only land which falls outside the protection of the Act altogether. The provision deals only with the case of a single letting of a dwelling-house that is protected by the Act with land or premises that are not protected; it has no application to a single letting of a protected dwelling-house and land which consists of business premises which are protected by s. 13 (*supra*, p. 8). Thus, in *Read* v. *Goater and Another* ((1921) 1 K.B. 611), a dwelling-house of the rateable value of £7 and a stable-yard, coach-house, etc., of the rateable value of £48 were let together under one agreement at a monthly rent of £6 13s. 4d., the stableyard, coach-house, etc., being occupied by the tenants in their business as livery-stable keepers. The County Court Judge held that as the stableyard, coach-house, etc., if let separately, would be of a rateable value greater than one-quarter of that of the house, the letting was by s. 12 (2) (*iii*) excluded from the operation of the Act. *Held* (on appeal) that the provisions of s. 12 (2) (*iii*) did not apply.

(3) (i) To a dwelling-house erected after or in course of erection on the 2nd April, 1919, nor

(ii) To any dwelling-house which has been since that date or was at that date being bona fide reconstructed by way of conversion into two or more *separate and self-contained* flats or tenements.

But, for the purpose of any enactment relating to rating, the gross estimated rental or gross value of any such house to which the Act would have applied if it had been erected

or so reconstructed before the 3rd August, 1914, and let at that date, shall not exceed :—

(*a*) If the house forms part of a housing scheme to which s. 7 of the Housing, Town Planning, &c., Act, 1919, applies, the rent (exclusive of rates) charged by the local authority in respect of that house; and

(*b*) In any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid (s. 12 (9)).

(For the substituted paragraph in the case of premises in Ireland, see s. 18 (2) (*f*), *infra*, p. 92.)

The word "erected" in the above provision is, apparently, not to be interpreted strictly, so as to confine the sub-section to houses completely erected or in course of being completely erected after or on the specified date, but as meaning "substantially erected." It appears to be sufficient to take premises out of the Act if the alterations in the structure of an existing building are so substantial that its character is entirely changed, as where several old houses are partly pulled-down and partly re-erected with addditions and alterations so that a building is created which in a broad and popular sense may be described as a new building. Thus, in *Phillips* v. *Barnett* ((1921) 37 T.L.R. 687), three dwelling-houses contiguous to each other were on August 3rd 1914, each let at a rental within the limits prescribed by the Act of 1915, subsequently passed. In October, 1919, when the houses became vacant, the landlord made extensive alterations and enlargements with the view of converting the houses into a factory, incurring expenses amounting approximately to £2,000. In July, 1920, the factory was demised for 21 years at the annual rent of £700, the first six months' rent (£350) being paid in advance. In November, 1920, the tenants brought an action in the County Court under s. 14 (1) of the Act (*infra*, p. 81) to recover from the landlord the difference between the rent paid by them and the standard rent. The County Court Judge held that the tenants were entitled to recover. On appeal this decision was reversed, the Divisional Court holding that the Act did not apply, as the factory was a new building and the standard rent of the old houses was not applicable to it.

It is obvious that it may often be very difficult to draw the line between houses which are within and those which are outside the provisions of s. 12 (9) (*supra*).

Section 7 of the Housing, Town Planning, &c., Act, 1919 (9 & 10 Geo. 5, c. 35), gives power to the Ministry of Health to recoup losses sustained by Local Authorities and County Councils in the carrying-out of any scheme for the provision of houses for the working classes.

The object of the above provisions as to rating is to secure that there shall be no inequality as between the assessment of new and that of existing houses of the same kind in the same district, and the result is that a house erected or in course of erection on the 2nd April, 1919, is treated as if its rateable value was that of a similar house erected before the 3rd August, 1914. (See the Circular (No. 130) addressed by the Ministry of Health to Assessment Committees dated 10th September, 1920, reprinted in 18 Local Government Reports, 369.)

Illustration.

A house of the value of £100 per annum has, since the 2nd April, 1919, been converted into three separate and self-contained flats, each flat being let at £50 per annum. The flats are not within the Act (cf. *Woodward* v. *Samuels* (1920), 89 L.J., K.B., 689, *infra*, p. 22).

(4) To the rent or tenancy of a dwelling-house where the rent payable in respect of such tenancy is less than two-thirds of the rateable value of the premises, nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house. The Act, however, shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed (s. 12 (7)).

Illustration.

A tenant occupies a dwelling-house under the terms of a long lease which has expired, the rent being £3 a year and the Poor Law Valuation of the premises being £17 a year. The house is outside the Act (see *Whelan* v. *Worth* (1921), 55 I.L.T. and S.J. 111); see also 10 L.J. County Court Reporter (1921), p. 11).

The word "rent" in s. 12 (7) (*supra*) means the actual rent reserved by the lease or agreement without any deduction for rates or taxes, although such are paid by the landlord. Thus, where a dwelling-house, of which the rateable value on 3rd August, 1914, was £40, was let in 1916 at £30 per annum, the landlord paying rates and taxes, which in 1919 amounted to £31 18s. per annum, it was held by the Court of Appeal (Lord Sterndale,

M.R., Scrutton and Younger, L.JJ.), that such house was not let at a rent of less than two-thirds of the rateable value within the meaning of s. 12 (7) (*supra*), and so was not excluded from the Act (*Mackworth* v. *Hellard* (1921), 37 T.L.R. 469).

" Rateable value " in s. 12 (7) (*supra*) means net and not gross rateable value (*Waller & Son, Limited* v. *Thomas,* (1921) 1 K.B. 541).

In consequence of the provisions of s. 12 (7) most ground rents are excluded from the Act. Therefore, on the termination of a lease premises in respect of which ground rent is paid may be re-let at an increased rent, which becomes the standard rent, the case being treated as that of premises which are first let after the 3rd August, 1914.

The proviso that " the Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed " means that, although, if the rent is less than two-thirds of the rateable value, the tenancy is not within the Act, " the Act would still apply to the house, and therefore if it were sub-let at a rent exceeding two-thirds of the rateable value, so that the sub-tenancy was outside the exception, the provisions of the Act would apply to that sub-tenancy " (*Waller & Son, Limited* v. *Thomas*, (1921) 1 K.B. 541, per Lush, J., at p. 549).

(5) To premises in respect of which there has been no legal " letting."

Where a house has never been let, the mere fact that its rateable value does not exceed the limits specified in s. 12 (2) (*supra*, p. 4) does not suffice to bring it within the Act. The Act, therefore, does not apply to premises in the occupation of the owner until they are let, unless they have at any time been " let " under circumstances bringing them within the Act or any of the earlier Acts (cf. *O'Neill* v. *Duncan* (1921), 55 I.L.T. 84, *infra*, p. 21). But as soon as the premises are let, the Act applies thereto and continues to apply, although subsequently the owner is himself again in occupation (s. 12 (6) ; see also *King* v. *York* (1919), 88 L.J., K.B. 839, *supra*, p. 5).

The Act, of course, has no application to caretakers and other servants who occupy premises for the purpose of their employment, to mere trespassers or tenants at will (see *Remon* v. *City of London Real Property Company* (1920), 36 T.L.R. 869, per Scrutton, L.J., at p. 871). If a person is to avail himself of the provisions of the Act, it is in the first instance necessary that he should be able to found his possession of the house on a contract of tenancy, and not solely upon a contract of service (see *Marquis of Bute* v. *Prenderleith* (1921), 58 Sc. L.R. 290 at p. 292). " Where

it is necessary for the due performance of his duties that a person should occupy certain premises, or where he is *required* to occupy premises for the more satisfactory performance of his duties although such residence is not necessary for that purpose, such person occupies in the capacity of servant," and the relation of landlord and tenant is not created between the parties. But " where a person is merely *permitted* to occupy premises, whether as a privilege, or by way of remuneration or part payment for his services, he occupies as tenant and not as servant " (Halsbury: Laws of England, XX, p. 69, and cases there cited; see also Redman: Law of Landlord and Tenant (7th ed.), p. 18; cf. s. 2 (1) (*e*) (*infra*, p. 29).

The distinction between occupation as a servant and occupation as a tenant is seen in several cases in which servants who have occupied premises in virtue of their service have claimed the protection of the Rent Restrictions Acts.

In *National Steam Car Company, Limited* v. *Barham* ((1920), 122 L.T. 315), the defendant was employed by the plaintiffs to take charge of a garage, and while so employed he was allowed to occupy a dwelling-house belonging to the plaintiffs adjoining the garage. On his employment being terminated, the defendant refused to vacate the dwelling-house, but it was held by A. T. Lawrence, J., that the Acts of 1915-1919 did not apply.

In *Ecclesiastical Commissioners* v. *Hilder* ((1920), 36 T.L.R. 771) the defendant, a caretaker of premises belonging to the plaintiffs, paid no rent and received no remuneration, but occupied rooms on the premises. When he was given notice to quit, he claimed the protection of the Act. It was held by Avory, J., that the defendant was not a tenant of the premises, but that, assuming that he was a tenant at will, the Acts did not apply to such a tenancy.

In a Scotch case, *Marquis of Bute* v. *Prenderleith* ((1921) 58 Sc. L.R. 290) where a gamekeeper, whose employment had terminated, refused to vacate the house which he had occupied solely in virtue of his employment, and the occupation of which formed part of the remuneration paid to him for his services, it was held by the Court of Session (First Division) that he was not a tenant and that the Act did not apply.

The principle underlying the decisions in the above cases is applicable to the common case where by the terms of his engagement a clergyman or other minister occupies rent free a house rented by the trustees of the church. As such occupation is only necessary for the convenient performance of his duties, the clergyman or other minister is not a tenant and is not entitled to the protection of the Act.

(6) In Ireland, to any dwelling-house provided by a local authority under the Labourers (Ireland) Acts, 1883 to 1919, or under any of those Acts (s. 18 (2) (*h*), *infra*, p. 93).

(4) Definitions.

(a) *Landlord and Tenant.*

Except where the context otherwise requires, the expression "landlord" used in the Act includes:—

(1) Any person from time to time deriving title under the original landlord (s. 12 (1) (*f*)), and

(2) Any person, other than the tenant, who is or would but for the Act be entitled to possession of the dwelling-house (s. 12 (1) (*g*)).

Except where the context otherwise requires, the expression "tenant" used in the Act includes:—

(1) Any person from time to time deriving title under the original tenant (s. 12 (1) (*f*)),

(2) A sub-tenant,

(3) The widow of a tenant dying intestate who was residing with him at the time of his death, or

(4) Where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the County Court (s. 12 (1) (*g*)).

Except where the context otherwise requires, the expression "tenancy" includes "sub-tenancy," and the expression "let" includes "sub-let" (s. 12 (1) (*g*).

Although by s. 12 (1) (*f*) and (*g*) of the Act (*supra*), it is provided that, for the purposes of the Act, the term "tenant" includes besides the original tenant a person deriving title under him, a sub-tenant, and certain other persons, the term is only used in that wide sense where the context does not otherwise require. As Rowlatt, J., points out in *Hylton* (*Lord*) v. *Heal* ((1921) 2 K.B. 438, at p. 446) there are certain provisions in the

Act (*e.g.*, s. 5 (1) (*a*) (*b*) (*c*) and (*d*)) in which the context requires that the term " tenant " be understood in a more restricted sense than that of the definitions in s. 12 (1) (*f*) and (*g*).

In *Collis* v. *Flower and Another* ((1921) 1 K.B. 409), where an executor of a deceased tenant held over after the expiration of a notice to quit and permitted the residuary legatee to occupy the house, it was held that the executor, although not in actual physical occupation of the house, was " tenant " within the meaning of the Act of 1915, s. 2 (1) (*d*) (re-enacted by s. 12 (1) (*f*) of the present Act), and was therefore entitled to the protection of the Act.

(B) *" Mortgagee " and " Mortgagor."*

Except where the context otherwise requires, the expressions " mortgagee " and " mortgagor " include any person from time to time deriving title under the original mortgagee or mortgagor (s. 12 (1) (*f*)).

Thus, the transferee of a mortgage is a person deriving title under the mortgagee (*Martin* v. *Watson and Egan*, (1919) 2 I.R. 332), as is also a sub-mortgagee. The purchaser of an equity of redemption is a person deriving title under the mortgagor. In an Irish case, *Martin* v. *Watson and Egan* (*supra*), it was held that the lessee under a lease void as against the mortgagee was a person deriving title under the mortgagor within the meaning of s. 2 (1) (*d*) of the Act of 1915 (replaced by s. 12 (1) (*f*) of the present Act (*supra*)).

(5) The Effect of the Act on Valuation for Rating Purposes.

The Act is to be taken into account in arriving at the valuation of a dwelling-house for rating purposes, under the Valuation (Metropolis) Act, 1869 (32 & 33 Vict., c. 67), and the highest gross value that can be put upon it is the " standard rent " (*infra*, p. 19) plus the highest increases of rent provided for by s. 2 (1) of the Act (*infra*, pp. 23 *et seq.*) (*Roberts* v. *Poplar Assessment Committee* (1921), 37 T.L.R. 688, *infra*, p. 19).

CHAPTER II.

Increase of Rent.

(1) Restrictions on Increasing Rent.

Subject to the provisions of the Act, where the rent of any dwelling-house to which the Act applies has been, since the 25th March, 1920, or is hereafter, increased, then, if the increased rent exceeds the "standard rent" as hereinafter defined (*infra*, p. 19) by more than the amount permitted under the Act (*infra*, pp. 23 *et seq.*), the amount of such excess is irrecoverable from the tenant, *notwithstanding any agreement to the contrary* (s. 1).

In the case of houses to which the Acts of 1915 to 1919 applied (*supra*, p. 2), the increase of rent was (with certain exceptions) on the 25th March, 1920, prevented by the provisions of those Acts.

The effect of s. 19 (3) of the Act and of s. 38 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), is to substitute for the 25th March, 1920, the 3rd August, 1914, in the case of 1915 Act houses, and the 25th December, 1918, in the case of 1919 Act houses.

The result is that, except as permitted by the present Act and the Acts of 1915 to 1919, no increase in rent is valid—

(1) In the case of 1915 Act houses, if taking effect after the 3rd August, 1914;

(2) In the case of 1919 Act houses, if taking effect after the 25th December, 1918; and

(3) In the case of 1920 Act houses, if taking effect after the 25th March, 1920.

(For Scales of Houses within the various Acts, see *supra*, p. 5.)

Even in a case where the increase is effective, having been made before the dates named (cf. *Sinclair* v. *Powell*, (1921) W.N. 206, *infra*, p. 23), the premises remain within the Act, unless both the amount of the standard rent and the rateable value exceed the limits specified in s. 12 (2) of the Act (*supra*, p. 4). The rent cannot be further increased beyond the

amounts permitted by s. 2 (1) of the Act (*infra*, pp. 23–29), and the tenant is entitled to the protection against ejectment given by s. 5 (*infra*, Chapter IV).

Illustrations.

(1) A house in London of the rateable value of £60 was let in 1914 at £80 per annum. In 1917 the rent was increased to £110. The increase is recoverable, though the house is otherwise within the Act.

(2) A house in London of the rateable value of £80 was let in 1914 at a rental of £95 per annum. In 1919 the rent was increased to £150. The increase is recoverable, though the house is otherwise within the Act.

In *Baker* v. *Wood* ((1920), 36 T.L.R. 281), where, before the Corn Production Act, 1917 (7 & 8 Geo. 5, c. 46) came into operation, a farmer deducted 1s. a week from the wages of an agricultural labourer in respect of the occupation of a cottage, it was held that the Act of 1915 did not prevent the farmer from deducting from the labourer's wages 3s. a week authorised to be deducted in respect of the benefit derived by the labourer from the occupation of the cottage under an Order made by virtue of the Corn Production Act, 1917, s. 12 (1) (*b*), inasmuch as the difference of 2s. was not deducted by way of rent, but as representing a benefit given in lieu of cash.

The material date to be considered on the question when an increase of rent is made is the date when the increase becomes effective, that is, the date when the increased rent begins to accrue, and not any earlier date at which the increase has been agreed upon between landlord and tenant.

In *Goldsmith* v. *Orr* ((1920), 36 T.L.R. 731) in March, 1912, a house within the Metropolitan Police District was let for three years at a rent of £50 per annum. After the expiration of the agreement the tenant remained in possession with the landlord's consent. In October, 1918, it was agreed that the tenant should continue to hold the house at a rent of £50 a year until 25th March, 1919, and thereafter for one year to 25th March, 1920, at an increased rent of £65 a year. After the making of the agreement the Act of 1919 came into force, the house being within its provisions. It was held by the Court of Appeal (Bankes and Scrutton, L.JJ., Warrington, L.J., dissenting) that the date of payment of the increased rent (24th June, 1919), not the date of the agreement, must be regarded as the date of the increase of the rent, and that, therefore, the rent had been increased since 25th December, 1918, and that so far as the increased rent exceeded the standard rent by more than 10 per cent. (the increase allowed by the Act of 1919) the plaintiff could not recover.

In *Raikes* v. *Ogle and Another* ((1921) 1 K.B. 576) by an agreement dated 12th March, 1920, premises, the standard rent

of which was £60 per annum, were let from 25th March, 1920, at the yearly rent of £230 payable quarterly, on the usual quarter days. It was held by Acton, J., that the increased rent began to accrue on 26th March; that the rent had, therefore, been increased since 25th March, 1920, and that, as the increased rent exceeded the standard rent by more than the amount permitted by the Act, the excess was irrecoverable. (See also *Ackland* v. *Lutley* (1839), 9 Ad. & E. 879; *Sidebotham* v. *Holland*, (1895) 1 Q.B. 378, as explained by Peterson, J., in *Meggeson* v. *Groves*, (1917) 1 Ch. 158.)

(2) Standard Rent.

The expression "standard rent" used in the Act means:—

(1) Where the dwelling-house was let on the 3rd August, 1914, the rent at which it was then let;

(2) Where the dwelling-house was not let on the 3rd August, 1914, either:—

(i) The rent at which it was last let before that date; or

(ii) In the case of a dwelling-house which was first let after that date, the rent at which it was first let (s. 12 (1) (*a*)).

(3) In the case of a dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the *maximum* rent payable under such tenancy agreement or lease (s. 12 (1) (*a*)).

But an agreement for a definite increase of rent for one particular period of twelve months does not create a progressive rent (*Goldsmith* v. *Orr* (1920), 36 T.L.R. 285).

(4) Where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value, the rateable value at that date is the standard rent (s. 12 (1) (*a*); *Glossop and Another* v. *Ashley*, (1921) 2 K.B. 451, per McCardie, J., at p. 460).

This provision meets the case where the rent by itself is not a fair indication of the value of the premises. A "tied" beer-house, for example, is let for a term of 21 years from 25th March, 1909, at a rent of £40 per annum. On 3rd August, 1914, the rateable value of the premises was £48. As the rent is less than the rateable value, the latter (£48) is the standard rent (*Roberts* v. *Poplar Assessment Committee* (1921), 37 T.L.R. 688;

see also *Glossop and Another* v. *Ashley*, (1921) 2 K.B. 451, per McCardie, J., at p. 460).

Where premises are let at an inclusive rent covering rates, which the landlord undertakes to pay, that charge is rent, and the amount of the rates cannot be deducted for the purpose of computing the standard rent as defined by the Act. Thus, in *Westminster and General Properties and Investment Company and Another* v. *Simmons* ((1919), 35 T.L.R. 669) a flat, the rateable value of which on 3rd August, 1914, was £49, was let on lease at a yearly rent of £80, inclusive of rates and taxes, which for the current year amounted to £18 5s. 8d. In holding that the flat was not within the Acts of 1915–1919, Bray, J., said that the standard rent was *primâ facie* that set out in the lease, namely, £80, and the fact that the lessor undertook the burden of paying the rates did not give any right to the tenant to a deduction from the rent in order to ascertain the standard rent. (See also *Isaacs* v. *Tittlebaum* (1920), 149 L.T.Jo. 84; *Lawrie* v. *Woods* (1920), 2 I.R. 106.)

In determining the standard rent of a public-house which is a "tied house," no amount may be added to the standard rent to represent the larger sum which might have been payable if no tie had existed. Thus, a public-house, which was let to a brewery company as a "free house" for a term of five years from August, 1911, at a rental of £130 per annum, was sub-let in October, 1911, as a "tied house" at a rental of £40 per annum, which was later reduced to £24. It was held that this reduced rent, which was in force on 3rd August, 1914, was the standard rent (*Glossop and Another* v. *Ashley*, (1921) 2 K.B. 451; see also *Roberts* v. *Poplar Assessment Committee* (1921), 37 T.L.R. 688).

The question arises whether, when there are intermediate lettings, there can be more than one standard rent of any particular premises. Take the common instance of a house let by *A* to *B* and sub-let by *B* to *C*. Is the standard rent the amount paid on the 3rd August, 1914, by *B* to *A*, or the amount paid by *C* to *B*, or is there one standard rent as between *A* and *B* and another as between *B* and *C*? Apparently in such a case the standard rent is the rent paid by the *occupying* tenant. In *Glossop and Another* v. *Ashley* ((1921) 2 K.B. 451, at p. 459), McCardie, J., said: "Upon the whole I come to the conclusion that the rent to be considered in each case must be the rent paid by the occupying tenant on August 3, 1914." This rent will usually, of course, be higher than that paid by any intermediate tenant, but it may well be lower, as it was in the case referred to.

There appears to be nothing in the Act to prevent a landlord from raising to the standard rent the rent of premises which,

since the 3rd August, 1914, have been let at a lower rent, provided that the tenancy is first duly determined (*Glossop and Another* v. *Ashley*, (1921) 2 K.B. 451, per McCardie, J., at p. 458). The increases permitted by s. 2 (1) of the Act (*infra*, pp. 23–29) may also be added on due notice being given in the prescribed form.

Rateable Value.

Where the rateable value of a dwelling-house is the criterion of value, it means either—

(i) The rateable value on the 3rd August, 1914; or

(ii) In the case of a dwelling-house or a part of a dwelling-house first assessed after that date, the rateable value at which it was first assessed (s. 12 (1) (*e*)).

"Rateable value" in the Act means *net* rateable value (*Waller & Son, Limited* v. *Thomas* (1921), 37 T.L.R. 325).

For the meaning of rateable value in the case of premises in Scotland, see s. 18 (1) (*a*), *infra*, p. 88, and in the case of premises in Ireland, see s. 18 (2) (*d*), *infra*, p. 91.

Illustrations.

(1) A house in London was on 3rd August, 1914, let at £100 per annum. In 1918 the rent was increased to £200. The standard rent being £100, the house is within the Act, although the increased rent is recoverable.

(2) A house in London of the rateable value of £100 was, on 3rd August, 1914, let at £115 per annum. The rateable value being £100, the house is within the Act.

(3) A house, of which the rent on 3rd August, 1914, was £40, was let in November, 1917, at £45 per annum. The standard rent is £40 (*Farrell* v. *Boland* (1918), 52 I.L.T. 216).

(4) A lease existing on 3rd August, 1914, reserved a rent of £58, free of all taxes. The standard rent is £58 (*Lawrie* v. *Woods* (1920), 2 I.R. 106).

(5) In 1908 a house which was let at the yearly rent of £19 was purchased by the tenant, who continued to reside in it until 1918, when he let it at a rent of £34 per annum. It was held by the Irish Court of Appeal that the house "was not let" on the 3rd August, 1914, within the meaning of s. 2 (1) of the Act of 1915 (replaced by s.12 (1) (*a*) of the present Act (*supra*, p. 19), and consequently the standard rent was the rent at which it was last let before that date, *i.e.*, £19 per annum (*O'Neill* v. *Duncan* (1921), 55 I.L.T. 84).

(6) By an agreement expiring at Midsummer, 1914, a house in the Metropolitan Police District was let at a rental of £90 per annum. The house remained vacant from Midsummer to Michaelmas, 1914, but in July, 1914, an agreement was executed by which the premises were let from Michaelmas, 1914, at a rental of £75 per annum. The standard rent is £90, as on 3rd August, 1914, there was merely an agreement to let the house at a future date.

(7) A house in London previously occupied by the owner was let in 1920 for the first time. The rent at which the house was then let is the standard rent. If such rent exceeded £105 per annum, the house is nevertheless within the Act, if the rateable value in 1914 did not exceed that amount.

(8) Three houses, each of which was within the Act of 1915, were in 1918 converted into a factory, which in 1920 was let at an annual rent of £700. The standard rent is £700 (*Phillips* v. *Barnett* (1921), 37 T.L.R. 687).

(9) A house of the rateable value of £34 is let to a relative of the landlord at an annual rental of £32. The standard rent is the rateable value (£34).

(10) A house was let in 1913 for five years at an annual rent of £50 for the first two years, £55 for the next two years, and £60 for the last year. The standard rent is £60.

(11) A house in London was let in 1913 for seven years at an annual rent of £90 for the first three years, £100 for the next two years, and £110 for the last two years. The standard rent is £110. If the rateable value on 3rd August, 1914, did not exceed £105, the house is within the Act; otherwise it is not.

(3) Apportionment of Rent or Rateable Value.

Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which the Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the County Court may, on application by either party, make such apportionment as seems just, and the decision of the Court as to the amount to be apportioned to the dwelling-house shall be final and conclusive (s. 12 (3)).

This clause provides machinery for ascertaining the standard rent or the rateable value in the case of a building which in 1914 was let as a whole, but which is now let in parts, each part being treated as a separate dwelling-house under the Act.

In *Woodward* v. *Samuels* ((1920), 89 L.J., K.B. 689) a dwelling-house, which in August, 1914, was occupied as a whole and let at a rent of £45, was in 1919 converted into three flats, which were let separately at aggregate yearly rents of about £152. The tenant of one of the flats applied to the County Court for the apportionment of the rent of the house on 3rd August, 1914, for the purpose of determining the "standard rent" of the flat. *Held*, that the rent of the undivided dwelling-house in August, 1914, must be apportioned for this purpose, and that the standard rent was not the rent fixed when the flat was first let. The present Act does not apply to a dwelling-house which has been since the 2nd April, 1919, or was at that date

being *bonâ fide* converted into two or more separate and self-contained flats or tenements (s. 12 (9)), (*supra*, p. 10).

Where a house which has been converted into flats, although within the provisions of the present Act, was not subject to any Restriction Act at the date of the conversion, the Court has no power to make an order for apportionment of the rent or rateable value thereof under s. 12 (3) of the Act (*supra*). Thus in *Sinclair* v. *Powell* ((1921) W.N. 206) a house which in 1914 was let at a yearly rent of £65, was in 1917 converted into three flats. The tenant of one of the flats, which was let at £50 a year, applied to the County Court to apportion the rent of the house on 3rd August, 1914. It was held by the Divisional Court that there was no jurisdiction to make any apportionment.

If premises used partly for business premises and partly as a dwelling-house have been demised together, there is no machinery which enables the Court to give the landlord possession of the business premises and to apportion the rent (*Ellen* v. *Goldstein* (1920), 89 L.J., Ch. 586); nor can the landlord in such a case ask for an apportionment of the rent as between the part of the premises used as a dwelling-house and the part used for business premises, and claim that the latter are business premises within s. 13 of the Act.

(4) Permitted Increases in Rent.

The amounts by which the increased rent payable in respect of premises to which the Act applies may exceed the standard rent as above defined (p. 19) are as follows :—

I. For Improvements or Structural Alterations : 6 per cent. on expenditure incurred between the 4th August, 1914, and 2nd July, 1920, and 8 per cent. on expenditure incurred since the latter date ;

II. For Increase of Rates : an amount not exceeding any increase for the time being payable by the landlord ;

III. (A) In the case of a dwelling-house an amount not exceeding 15 per cent. of the net rent ;
(B) In the case of business premises an amount not exceeding 35 per cent. of the net rent ;

IV. For Repairs : (A) where the landlord is responsible for the whole of the repairs, an amount not exceeding 25 per cent. of the net rent ; (B) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed or may be determined by the County Court ;

V. In the case of dwelling-houses let by a railway company to persons in their employ, the additional amount mentioned in s. 2 (1) (*e*).

I.—For Improvements or Structural Alterations.

(i) An amount not exceeding 6 per cent. per annum on the amount expended by the landlord on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs) between the 4th August, 1914, and the 2nd July, 1920 (s. 2 (1) (*a*));

(ii) An amount not exceeding 8 per cent. per annum on the amount expended by the landlord on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs) since the 2nd July, 1920 (s. 2 (1) (*a*)).

The tenant may apply to the County Court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the Court may make an order accordingly (s. 2 (1) (*a*)).

"Improvement or structural alteration" would include the building of an additional room, *e.g.*, a bathroom or a scullery, but apparently not work which the landlord has had to do under a magistrate's order. It will be observed that no increase is permissible *under this head* in respect of expenditure on decoration or repairs, *e.g.*, repairing or replacing defective drains or putting in a new cistern, nor, presumably, for any amount paid for street improvements, such as road-making and paving.

It is unlikely that the Court would interfere where a tenant had tacitly consented to the expenditure on improvements or alterations by permitting the work to be carried out without protest.

II.—For Increase of Rates.

An amount not exceeding any increase in the amount for the time being payable by the landlord in respect of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the 3rd August, 1914, or in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which included the date on which the rates first became payable thereafter (s. 2 (1) (*b*)).

The expression " rates " includes water rents and charges (s. 12 (1) (*d*)).

In an Irish case, *Cork Improved Dwellings Co.* v. *Barry* ((1919) 2 I.R. 244), it was held that rent could be increased in respect of poor rate, but not in respect of rates levied under local Acts which incorporated the Towns Improvement Clauses Act, 1847, as these were not " chargeable on the occupier " under s. 1 (*iv*) of the Act of 1915. The words " chargeable on the occupier " are omitted from s. 2 (1) (*b*) of the present Act, but as " water rents and charges " are expressly mentioned, probably other rates are excluded on the principle *expressum facit tacitum cessare.*

Section 12 (1) (*d*) (*supra*) does not apply to Scotland (s. 18 (1) (*c*)). For special provisions as to rates in Scotland, see s. 18 (1) (*b*) (*infra*, pp. 88–90).

Any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded (s. 12 (1) (*d*)).

This provision enables the landlord to carry the increase in respect of rates over into the next rating period until a new rate is demanded, and meets the case where, as frequently happens, a rate is not made until some time after the beginning of the rating period.

Only a proportionate amount of the increase in the current rates may be added to the rent. This amount is arrived at by dividing the amount of the increase by the number of weeks in the rating period, yearly or half-yearly, as the case may be.

The method of arriving at the amount of the increase is well illustrated in *Cardiff Corporation* v. *Isaacs ; Same* v. *Crosta* ((1921), 37 T.L.R. 649). In each of these cases a dwelling-house was let on a weekly tenancy, and the rates, which were payable by the landlords, were assessed for half-yearly periods ending on 31st March and 30th September. For the six months ending on 30th September, 1920, a new rate was allowed on 17th May, which exceeded that payable for the half-yearly period including 3rd August, 1914, by £1 18s. 11d. On 17th May, 1920, the landlords served on each of the tenants a notice under s. 1 (1) (*vi*) of the Act of 1915 increasing the weekly rent by one-nineteenth of £1 18s. 11d., such notice expiring on 15th June, 1920, *i.e.*, the landlords claimed to divide the increase in the amount of the rate by the number of weeks between 17th May, 1920, when the rate was allowed, and 30th September, 1920, the end of the period for which the rate was made. It was held by the Divisional

Court that the landlords were entitled to increase the tenants' weekly rent only by one twenty-sixth of the amount of the increase of rates, such increase to begin on the expiry of the four weeks' notice and to continue payable by the tenants not only until 30th September, 1920, the end of the half-yearly period but until the next rate was demanded. (See also *W. H. Sutton and Sons* v. *Hollerton*, (1918) W.N. 236.)

Rent can be increased only in respect of current rates ; it cannot be increased in respect of arrears of rates. In other words, a landlord cannot allow an increase of rates to run on from year to year, and then require the tenant to pay the whole amount of the increase in the current year (see *W. H. Sutton and Sons* v. *Hollerton*, (1918) W.N. 237).

A fresh statutory notice under s. 3 (2) must be served on every fresh increase of rent on account of rates.

If rent is increased in respect of an increase in the rates, and the rates afterwards decrease, it appears clear that the landlord must make a corresponding reduction in the rent, for " any increase in rates payable by a landlord shall be deemed to be payable *until the rate is next demanded* " (s. 12 (1) (*d*) ; see also *W. H. Sutton & Sons* v. *Hollerton*, (1918) W.N. 237, where the point was raised by Pickford, L.J., who, however, expressed no opinion on it.

A landlord who pays rates is entitled to increase the rent by the amount of any actual increase payable in respect of the rates, not merely where such increase is caused by an increase in the rates, but also where it is caused by an increase in the rateable value of the premises (*Steel and Another* v. *Mahoney* (1918), 34 T.L.R. 327). Where a landlord agrees with the overseers under s. 3 of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict., c. 41), to pay the poor rate, and is allowed a commission on the amount thereof, he is entitled to increase the rent only by the amount of the increase in the net amount payable by him after deducting commission, and not by the amount of any increase in the actual rates (*Nicholson* v. *Jackson* (1920), 36 T.L.R. 854).

Where there is a lease in existence under which the landlord has entered into a covenant to pay all the rates during the term, he cannot escape from the full effects of the covenant by requiring the tenant to pay the amount of any increase in the rates (see *Connolly* v. *Whelan* (1920), 53 I.L.T. 18, per Samuels, J., at p. 20).

Section 3 of the Poor Rate Assessment and Collection Act, 1869, shall, except so far as it relates to the Metropolis, have effect as though for the limits of value specified in that

section there were substituted limits 25 per cent. in excess of the limits so specified, and that section and s. 4 of the same Act shall have effect accordingly (s. 16 (1)).

This provision is intended to prevent the increases of rent permitted by the Act from bringing houses which were formerly within the compounding limits for rating purposes under the Poor Rate Assessment and Collection Act, 1869, ss. 3 and 4, above those limits.

The Poor Rate Assessment and Collection Act, 1869 (32 and 33 Vict., c. 41) provides that where the rateable value does not exceed in London £20, in Liverpool £13, and in Manchester or Birmingham £10, and elsewhere £8, the owner may agree with the overseers to be liable for the poor rates, whether the premises are occupied or not, and he may be allowed a commission not exceeding 25 per cent. on the amount of the rate (s. 3); or the overseers may, as regards such premises (provided that they include a dwelling-house), assess the rate on the owners instead of the occupiers, allowing an abatement of 15 per cent., and if the owner is willing to be rated whether the premises are occupied or not, a further abatement not exceeding 15 per cent. (s. 4).

III.—In addition to any such amounts as aforesaid:—

(a) In the case of a Dwelling-house an amount not exceeding 15 per cent. of the Net Rent.

(i) In the case of a dwelling-house to which the Act applies, but the earlier Acts did not apply, the whole of this increase of 15 per cent. may be demanded at the expiration of the four weeks' notice mentioned in s. 3 (2) (*infra*, p. 31);

(ii) In the case of a dwelling-house to which the earlier Acts applied (*i.e.*, "1915 Act houses" and "1919 Act houses") not more than 5 per cent. of this increase may be demanded during the period of one year after the passing of the Act (2nd July, 1920) (s. 2 (1) (*c*)).

(b) In the case of Premises used solely for Business, Trade or Professional Purposes or for the Public Service an amount not exceeding 35 per cent. of the Net Rent (s. 13 (1) (*a*)).

The application of the Act to premises used solely for business purposes ceases on the 24th June, 1921 (s. 13 (3)).

It is important to bear in mind that where business premises are part of premises let as a dwelling-house they fall under the general provisions of the Act (s. 12 (2) (*ii*), *supra*, p. 6), and the rent can be increased only by 15 per cent. under this head. Where, however, premises are used solely for business, trade or

professional purposes or for the public service, and are brought within the Act until the 24th June, 1921, by s. 13, the rent can be increased by 35 per cent. under this head.

IV.—A Further Addition :—

(i) *Where the landlord is responsible for the whole of the repairs*, an amount not exceeding 25 per cent. of the *net* rent; or

(ii) *Where the landlord is responsible for part and not the whole of the repairs*, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the County Court to be fair and reasonable having regard to such liability (s. 2 (1) (*d*)).

It is presumed that where the amount of the increase is determined by the County Court, that amount will be payable from the time fixed in the notice of increase. If the tenant is entirely responsible for repairs, no addition may be made to the rent under this head.

The expression " repairs " means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no *express* liability (s. 2 (5)).

" Good tenantable repair " is " such repair as, having regard to the age, character, and locality of the house, would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it " (*Proudfoot* v. *Hart* (1890), 25 Q.B.D. 42, per Lord Esher, M.R., at p. 52 ; per Lopes, L.J., at p. 55). Decorative repair would probably be held to be included.

Unless the tenant is under an express liability for repairs, the landlord is entitled to the increase under this head notwithstanding the fact that no expenditure on repairs has been incurred during the period to which the increase of rent relates, if the premises are in a reasonable state of repair.

The Act makes no provision for reduction of the increase under this head where a tenant has voluntarily executed repairs which the landlord has neglected to do.

The increases under heads I, II, III and IV (*supra*) are not alternative but cumulative. Any increases permitted under the previous Acts are, however, included, so that if the landlord has already made the increase of 10 per cent. permitted to be added to the standard rent in the case of 1919 Act houses by s. 4 of the

first Act of 1919, he must give credit for the amount of such increase in calculating the increases permitted by the present Act.

It is important to bear in mind that the increases authorised under heads III and IV (*supra*) are to be calculated, not on the standard rent or on the actual rent paid by the tenant, but on the *net* rent.

The expression " net rent " as used in the Act means :—

(i) Where the landlord at the time by reference to which the standard rent is calculated paid the rates chargeable on, or which but for the provisions of any Act would be chargeable on the occupier, the standard rent *less* the amount of such rates, and

(ii) In any other case the standard rent (s. 12 (1) (*c*)).

Thus, if the tenant pays the rates, the " standard rent " and the " net rent " are the same.

Illustration.

A house was let on the 3rd August, 1914, at a rent of £60 per annum, landlord paying rates and taxes, which for the year ending 30th September, 1914, amounted to £14. The net rent is £60, less £14 = £46.

V.—In the case of Dwelling-houses let by a Railway Company to Persons in the Employment of the Company :—

In the case of dwelling-houses let by a railway company to persons in the employment of the Company, such additional amount, if any [above the standard rent], as is required in order to give effect to the agreement dated the 1st day of March, 1920, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement, whether made before or after the passing of the Act, extending or modifying that agreement (s. 2 (1) (*e*)).

Many grades of the railway employés concerned in the agreement referred to have housing accommodation provided for them by the railway companies at nominal cost. The agreement provides that these men shall in future pay rent, so as to equalise their remuneration with those for whom housing accommodation is not provided. Without the provisions of s. 2 (1) (*e*) (*supra*) the railway companies could not alter the terms of a tenancy, and the agreement in question could not be carried out.*

* In an Appendix (p. 95) will be found a number of examples illustrating the working of the provisions of the Act relating to the permitted increases in the standard rent.

(5) Transfer of any Burden or Liability.

Any transfer to a tenant of any burden or liability previously borne by the landlord is, for the purposes of the Act, to be treated as an alteration of rent.

And where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased.

Any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of the Act.

But, for the purposes of s. 2, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent (s. 2 (3)).

This latter provision enables a landlord (but only with the tenant's consent) to transfer to the tenant the liability for rates, so that afterwards the tenant will pay the rates direct to the local authority, provided that the rent is reduced by the amount of the rates.

Illustration.

A house is let at a rental of £60 per annum, the landlord doing repairs. By agreement with the tenant the latter undertakes in future the liability for repairs, the cost of which is estimated at £15 per annum. The rent is to be deemed to be increased by this amount.

(6) Determination of Questions as to Increase of Rent.

Any question as to any increase of rent permissible under the Act is to be determined by the County Court on the application either of the landlord or the tenant, and the decision of the Court is final and conclusive (s. 2 (6); see also *Lyon* v. *Morris* (1887), 19 Q.B.D. 139).

(7) Limitation as to Permitted Increases in Rent.

No increase in rent is due or recoverable :—

(1) Except in respect of a period during which, but for the Act, the landlord would be entitled to obtain possession (s. 3 (1)).

A landlord cannot increase rent merely by giving notice to the tenant that he requires an increased rent. In the absence of agreement by the tenant, rent cannot be increased during the continuance of the tenancy. The existing tenancy must first have been terminated either by effluxion of time or by the landlord or the tenant having given a valid notice to quit (see *Glossop and Another* v. *Ashley*, (1921) 2 K.B. 451, per McCardie, J., at p. 456 ; *Connolly* v. *Whelan* (1919), 54 I.L.T. 18, per Samuels, J., at p. 19).

(2) Until, or in respect of any period prior to, the expiry of *four clear weeks*, or, where such increase is on account of an increase in rates, *one clear week*, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to the Act (see Appendix, p. 94), or in a form substantially to the same effect (s. 3 (2)).

The expressions " clear weeks " and " clear week " mean that in computing the time both the first and the last days of the respective periods are to be excluded (see *Halsbury: Laws of England*, XXVII, p. 448).

If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord is liable on summary conviction to a fine not exceeding £10, unless he proves that the statement was made innocently and without intent to deceive (s. 3 (2)).

Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant (s. 3 (2)).

A notice served before the passing of the Act (2nd July, 1920) of an intention to make any increase of rent which is permissible only by virtue of the Act is not to be deemed to be a valid notice for the purpose aforesaid (s. 3 (3)).

There appears to be no objection to the notice to quit and the notice of intention to increase the rent being served together, as was done in *Lever Brothers Limited* v. *Caton* (1921), 37 T.L.R. 664). (See also *Redman : Law of Landlord and Tenant*, 7th ed., p. 620 ; and a decision of the Irish King's Bench Division, noted in 55 I.L.T. and S.J. 145).

The service of a valid notice is a condition precedent to the landlord's right to recover the increase, and until the expiration of the four clear weeks, or, in the case of rates, one clear week, the liability of the tenant does not begin to run. The decision in *Steel* v. *Mahoney* ((1918), 34 T.L.R. 327) that the landlord was not debarred by s. 1 (1) (*vi*) of the Act of 1915 from claiming the increase as from the date of the notice, but only prevented from suing for it until after the expiration of the four weeks mentioned in the Act had expired, is no longer authoritative.

In *Steel* v. *Mahoney* (*supra*) it was also held that it was immaterial under the Act of 1915 that the notice to the tenant of an increase in rent was inaccurate in amount, if the increase was reduced to the proper figure when the claim was made. But in view of the provision of s. 3 (2) of the present Act that the notice must be a " valid " notice, this decision also would appear to be no longer authoritative.

A tenant who holds over under the Act may assent to the permissible increases of rent and become contractually bound in respect thereof. Such assent, which may be (A) in writing, (B) by parol, apart from any question of the Statute of Frauds, or (C) by conduct, would not be a contracting outside the provisions of the Act, but would be a contract within the provisions of the Act, and, therefore, the point as to freedom of contract which was discussed in *Barton* v. *Fincham* ((1921) 2 K.B. 291, *infra*, p. 83) would not arise (see *Glossop and Another* v. *Ashley*, (1921) 2 K.B. 451, per McCardie, J., at p. 457). Although s. 2 of the Act (which relates to " permitted increases ") gives no express power to the landlord to impose *in invitum* an increase of rent on a tenant who remains in possession in reliance on the Act, yet it appears clear that, provided that the existing tenancy has been determined, the Act impliedly gives the landlord power to make the permitted increases as against a tenant who holds over as a statutory tenant, even though such tenant does not assent thereto (*Glossop and Another* v. *Ashley* (*supra*), per McCardie, J., at p. 456 ; see also *Cork Improved Dwellings Co.* v *Barry*, (1919) 2 I.R. 244). Before, however, he can impose the permitted increases, the landlord must comply with the conditions precedent prescribed by s. 3 (2) of the Act (*supra*, p. 31).

It was held under the Act of 1915 that where rent had been increased before the Act came into force, such increase was not recoverable after the Act came into force unless the landlord had given notice in writing as required by s. 1 (1) (*vi*) of the Act of his intention to increase the rent (*Wortley* v. *Mann*, (1916) W.N. 390 ; *Bridges* v. *Chambers* (1919), 88 L.J., K.B. 500).

Where a tenant is holding over merely as a statutory tenant under the Act (s. 15 (1)) after a prior tenancy has been determined by effluxion of time or by notice to quit, it would appear that there is no necessity for the landlord to serve a notice to quit before imposing the increases of rent permitted by s. 2 (1) of the Act (*supra*, pp. 23-29), as, in such a case, apart from the Act, the landlord would be entitled to possession of the premises. The position appears to be the same, although the prior tenancy has been determined by notice to quit given by the landlord and he has accepted rent due subsequently to the expiration thereof (see *infra*, p. 39). If, therefore, a landlord has already increased the rent by the amounts permitted by s. 2 (1) of the Act, he may apparently, without serving a fresh notice to quit, further increase it in respect of increased rates or in respect of the additional 10 per cent. of the net rent permitted after the 2nd July, 1921, by s. 2 (1) (*c*) in the case of 1915 Act houses and 1919 Act houses (*supra*, p. 27) on giving four clear weeks' notice in the prescribed form of his intention so to do (s. 3 (2)).

(8) Suspension of Increased Rent if House not in a Reasonable State of Repair.

At any time or times, not being less than three months after the date of any increase under head IV (*supra*, p. 28), the tenant or the sanitary authority may apply to the County Court for an order suspending such increase, and also any increase under head III (*supra*, p. 27), on the ground that the house either (i) is not in all respects reasonably fit for human habitation, or (ii) is otherwise not in a reasonable state of repair (s. 2 (2)).

On any such application the Court on being satisfied (1) by the production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and (2) that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the Court

is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the Court is so satisfied (s. 2 (2)).

On any application to a sanitary authority for such a certificate or report as above mentioned, a fee of one shilling is payable, but if, as the result of such application, the authority issues such a certificate as aforesaid, the tenant is entitled to deduct the fee from any subsequent payment of rent (s. 2 (4)).

"Reasonable state of repair" in s. 2 (2) (*supra*) would probably be held to include some decoration. (See also s. 2 (5) (*supra*, p. 28).)

For a case in which the Court made an order suspending the statutory increase of rent on the ground that the house was not in a reasonable state of repair, see *Lynch* v. *Keirans* (1921), 55 I.L.T. & S.J. 59.

As to the application of the provisions of s. 2 (2) (*supra*) to Ireland, see s. 18 (2) (*g*), *infra*, p. 93.

(9) Statement to be supplied as to Standard Rent.

A landlord of any dwelling-house to which the Act applies shall, on being so requested in writing by the tenant thereof, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he is liable on summary conviction to a fine not exceeding £10 (s. 11).

As, with the exception of ss. 9 and 10 (*infra*, pp. 67-69), the Act has no application to furnished premises, there can be no "standard rent" of such premises. The absence of any provision requiring the landlord of furnished premises to state the rent at which they were let in 1914 may render it difficult for the tenant of such premises to prove under ss. 9 and 10 that the rent charged is excessive.

Attention is also directed to the provisions of the Statement of Rates Act, 1919 (9 & 10 Geo. 5, c. 31). (See also the House-Letting and Rating (Scotland) Act, 1920 (10 Geo. 5, c. 8), ss. 2-4.)

CHAPTER III.

Statutory Tenancy.

(1) Creation of Tenancy.

As soon as an existing tenancy has been lawfully determined, whether by effluxion of time or by notice to quit, a statutory tenancy is created by the Act (s. 15 (1)); *Remon* v. *City of London Real Property Company, Limited*, (1921) 1 K.B. 49; see also *Vernon Investment Association* v. *Welch* (1919), 35 T.L.R. 511; *Crook* v. *Whitbread* (1919), 35 T.L.R. 522; *Dobson* v. *Richards* (*or Rickards*), (1919) W.N. 166; and a tenant who holds over after the expiration of his tenancy is not (except in the circumstances mentioned in s. 5 (1) (*c*) of the Act, *infra*, p. 47) debarred from availing himself of the protection given by the Act by reason of the fact that his tenancy has been determined by his having himself given notice to quit (*Hunt* v. *Bliss* (1919), 36 T.L.R. 74; *Artisans, Labourers and General Dwellings Co., Ltd.* v. *Whitaker*, (1919) 2 K.B. 301). In such a case the usual condition as to giving up possession on the termination of the tenancy is otiose (*Artisans, Labourers and General Dwellings Co., Ltd.* v. *Whitaker* (*supra*)).

There must, of course, have been a previous legal "letting" and legal tenancy, and caretakers, occupants by service, and mere trespassers are not protected (see *Remon* v. *City of London Real Property Company*, (1921) 1 K.B. 49, per Scrutton, L.J., at p. 59; see also *supra*, p. 13).

The Act applies and protects a tenant, notwithstanding the fact that the landlord has re-entered without any assistance

from the Court. Thus, in *Remon* v. *City of London Real Property Company, Limited* (*supra*) a tenant went into possession of certain business premises on a quarterly tenancy which commenced on 25th December, 1915. The tenancy was terminated by a valid notice to quit expiring on 24th June, 1920. The tenant did not, however, vacate the premises, but remained in possession against the will of the landlords. Meanwhile the Act of 1920, the first Restriction Act applying to business premises, came into force on 2nd July, 1920. On 2nd July the landlords entered the premises and re-took possession. It was held by the Court of Appeal (Bankes, Scrutton and Atkin, L.JJ.) that, although the agreement of tenancy had come to an end by virtue of the notice to quit, business premises being within the Act, the premises were "let" within the meaning of s. 12 (2), and the tenant was a tenant who by virtue of the provisions of the Act retained possession within the meaning of s. 15 (1) of the Act, and that the landlords could not lawfully disturb him in his possession.

(2) Conditions of Tenancy.

A tenant who by virtue of the provisions of the Act retains possession of any dwelling-house to which the Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of the Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice. But notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid is not required to give any notice to quit to the tenant (s. 15 (1)).

The statutory tenancy which comes into existence on the determination of the previous tenancy is on the terms and conditions of the former tenancy subject to any modifications made by the Act. No other conditions may be incorporated without the tenant's consent (see *infra*, p. 84).

No tenant retaining possession as aforesaid shall as a condition of giving up possession ask or receive payment of any sum, or the giving of any other consideration, by any person other than the landlord. Any person contravening this provision is liable on summary conviction to a fine not exceeding £100, and the Court by which he is convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any such order shall be in lieu of any other method of recovery prescribed by the Act (s. 15 (2)).

This provision "is intended to prevent the statutory tenant from making a profit out of his position by taking money or any form of consideration for letting some third person other than his landlord into possession. Both parties to the transaction are rendered liable to conviction. It seems obviously necessary to exclude a landlord who may be willing to pay something to a tenant for vacant possession from this penalty" (*Barton* v. *Fincham*, (1921) 2 K.B. 291, per Bankes, L.J., at p. 295 ; cf. *Remmington* v. *Larchin*, (1921) *The Times*, March 16, June 15).

It shall be deemed to be a condition of the tenancy of any dwelling-house to which the Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute (s. 16 (2)).

Where a tenant of premises to which the Act applies holds over after the determination of the term and a notice to give up the premises, he is not liable for double the yearly value under the Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 1, or for use and occupation after the expiration of the notice (*Crook* v. *Whitbread* (1919), 35 T.L.R. 522).

In *Flannagan* v. *Shaw*, (1920) 3 K.B. 96) it was held by the Court of Appeal (Bankes, Scrutton and Duke, L.JJ.) that the provisions of s. 1 (1) of the Act of 1915, whereby in the case of a dwelling-house to which that Act applied any increase in the rent beyond the standard rent as defined by the Act was irrecoverable, did not prevent a landlord from recovering a penal sum amounting to double rent under s. 18 of the Distress for Rent Act, 1737 (11 Geo. 2, c. 19) where the tenant held over after giving notice to quit, the Court holding that the object and purview of the

earlier enactment were entirely different from those of the Act of 1915, and that the force and effect of the former Act remained unaffected by the later one.

What is the position now? There is no express repeal of s. 18 of the Distress for Rent Act, 1737, and it has been suggested that the failure of the present Act expressly to over-ride the decision in *Flannagan* v. *Shaw* (*supra*) amounts in effect to a statutory confirmation of it (see 36 *Law Quarterly Review*, p. 329). But in view of the provisions of s. 15 (1) of the Act (*supra*, p. 36), it is submitted that, so far as premises to which the present Act applies, s. 18 of the Distress for Rent Act, 1737, has been impliedly repealed, and that the decision in *Flannagan* v. *Shaw* (*supra*) is no longer authoritative. This view receives support from the provisions of s. 5 (1) (*c*) of the Act (*infra*, p. 47) and from the decision of the Court of Appeal in *Barton* v. *Fincham*, (1921) 2 K.B. 291, *infra*, p. 83), although in that case the Court was not called on to decide the point. The Distress for Rent Act, 1737, does not apply to Scotland.

It is doubtful whether the statutory tenancy created by the Act can be assigned. Section 15 (1) refers to a tenant who by virtue of the provisions of the Act *retains* possession of a dwelling-house to which the Act applies. Although by s. 12 (1) (*f*) (*supra*, p. 15), for the purposes of the Act, the expression "tenant" includes any person from time to time deriving title under the original tenant, this is only "except where the context otherwise requires" (s. 12 (1)), and it may well be argued that in s. 15 (1) the context does require a more restricted interpretation (cf. *Reeves* v. *Davies* (1921), 37 T.L.R. 431, per Scrutton, L.J., at p. 432, and especially *Hylton* (*Lord*) v. *Heal*, (1921) 2 K.B. 438, per Rowlatt, J., at pp. 445-446). Even if the statutory tenancy can be assigned, the tenant may not receive any consideration for the assignment (s. 15 (2), *supra*, p. 37).

(3) Termination of Tenancy.

The statutory tenancy created by the Act can be determined only in the following ways :—

(1) By agreement of the parties followed by the actual delivery of possession by the tenant to the landlord.

It is quite clear, from the decision in *Barton* v. *Fincham* ((1921) 2 K.B. 291, *infra*, p. 83), that a mere agreement to give up possession, even when made for a valuable consideration, is not sufficient to determine the tenancy, or to entitle the landlord to apply to the Court for an order for possession.

(2) By the tenant giving such notice as would have been required under the original contract of tenancy, or if no notice would have been so required, on giving not less than three months' notice (s. 15 (1)), such notice being followed by the actual delivery of possession by the tenant to the landlord.

It follows that where a tenant has held over after the determination of a previous yearly tenancy he can terminate the statutory tenancy only on giving the usual six months' notice expiring at the end of the current year of the tenancy.

The landlord cannot determine the statutory tenancy by notice.

(3) By the expiration of the Act, which continues in force as to dwelling-houses, until the 24th June, 1923 (s. 19 (2)), and as to premises used solely for business, trade or professional purposes or for the public service until the 24th June, 1921 (s. 13 (3)).

(4) By operation of law, *e.g.*, bankruptcy.

Where a tenant's interest has been entirely divested from him by the operation of law, there is nothing for the Act to apply to or protect. Thus, where a tenant's interest has been entirely divested from him by his having been adjudicated bankrupt, he cannot claim the protection of the Act, whether the trustee in bankruptcy has or has not disclaimed the lease (*Reeves* v. *Davies* (1921), 37 T.L.R. 431).

(5) By annulment of the contract of tenancy under the powers conferred on the Court by the Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25), s. 1 (2).

(See *Boyce* v. *Hill*, (1918) 2 K.B. 616; *Cody* v. *Copeland* (1919), 63 S.J. 760.)

(6) By the landlord obtaining a judgment or order for possession on one of the grounds specified in s. 5 (1) of the Act.

See next chapter.

(4) Acceptance of Rent after Notice to Quit.

Where the landlord of any dwelling-house to which the Act applies has served a notice to quit on a tenant, the

acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits (s. 16 (3)).

There was no similar provision in the Acts of 1915 to 1919. It was, however, held that where the tenancy of a house to which these Acts applied had been duly terminated by notice to quit, and the tenant held over after the expiration of the notice, the landlord, by accepting from the tenant rent accrued due subsequently, did not waive his rights under the notice, and was not precluded from insisting that the tenancy had been determined, nor from recovering possession of the premises if the tenant did not come within the conditions under which the Acts afforded him protection (*Davis* v. *Bristow*; *Penrhos College Limited* v. *Butler* (1921), 90 L.J., K.B. 164; see also *Hunt* v. *Bliss* (1919), 36 T.L.R. 74; and cf. *Hartell* v. *Blackler*, (1920) 2 K.B. 161).

What is the position where a landlord accepts rent for a period exceeding three months from the expiration of the notice to quit? In view of the above-mentioned decision the provision in s. 16 (3) of the Act (*supra*) was, of course, unnecessary, and there is considerable room for argument that, as it is expressly stated that acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit does not prejudice the landlord's rights, acceptance of rent for a longer period does prejudice his rights. It is, however, submitted that the *ratio decidendi* in the above-mentioned cases still holds good, and that in spite of s. 16 (3) of the Act the landlord's rights are not prejudiced by such acceptance.

(5) The Position of Sub-Tenants.

An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under s. 5 of the Act (see next chapter) shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under that section, or be in any way operative against any such sub-tenant (s. 5 (5)).

Section 5 (5) of the Act (*supra*) has been judicially explained in *Hylton* (*Lord*) v. *Heal* ((1921) 2 K.B. 438). "In my view," said Rowlatt, J. (at p. 449 of the Report), "this sub-section only means that where there is a sub-tenant lawfully and *de facto* in possession of the house, the landlord who desires to recover possession cannot avail himself as against the sub-tenant of any order or judgment which he may have recovered against the tenant, but must commence separate proceedings against the sub-tenant, in which the latter can urge whatever matters he may think fit, including matters personal as between himself and the landlord affecting the reasonableness of the landlord's demand, which is one of the elements to be taken into account in the proceedings. That, I think, is the purpose to which this sub-section is limited."

A sub-tenant is placed by the Act in the position of the principal tenant, and is entitled to the same protection, but only if both the following conditions have been fulfilled :—

(1) The premises must have been lawfully sublet ; and

(2) The premises must have been so sublet before proceedings for recovery of possession or ejectment were commenced.

(1) The premises must have been lawfully sublet, *i.e.*, there must have been nothing in the agreement of tenancy to prevent such sub-letting.

Every tenant (except a tenant at sufferance or at will) has, in the absence of agreement to the contrary, the right to sublet the premises (*Redman*: *Law of Landlord and Tenant* (7th ed.), p. 390). If a lease or agreement for tenancy contains a covenant against underletting simply, an underletting of part is no breach (*Wilson* v. *Rosenthal* (1906), 22 T.L.R. 233 ; *Cottell* v. *Baker* (1920), 36 T.L.R. 208) ; but if the covenant is so worded, it will extend to an underletting of part of the premises (*Roe d. Dingley* v. *Sales* (1813), 1 M. & S. 297).

Where by reason of a breach of covenant not to underlet without the consent of the lessor, a tenant is disentitled to the protection of the Act, the sub-tenant to whom the premises have been sublet in breach of the covenant is also disentitled to the protection of the Act (*Dick and Another* v. *Jacques and Another* (1920), 36 T.L.R. 773).

Although the landlord may not be able to recover possession of the part of the premises occupied by the sub-tenant, he may, in a proper case, obtain possession of the part occupied by his immediate tenant, for the sub-tenant may be protected while

the tenant is not. Thus, both the standard rent and the rateable value of the whole of the premises may exceed the limits specified in s. 12 (2) of the Act (*supra*, p. 4), although by reason of its rent or rateable value the part occupied by the sub-tenant is within the Act (see *Cottell* v. *Baker* (1920), 36 T.L.R. 208 ; cf. *Murphy* v. *Porter and Blaney* (1919), 53 I.L.T. 151). Again, although the Act has no application to the rent or tenancy of a dwelling-house where the rent payable in respect of such tenancy is less than two-thirds of the rateable value thereof (s. 12 (7), *supra*, p. 12), yet, if the tenant of such a dwelling-house has sub-let the same at a higher rent, the Act would apply to the sub-tenancy (*Waller & Son, Limited* v. *Thomas* (1921), 37 T.L.R. 325, per Lush, J., at p. 327). Further, if a house and land are let together, and the rateable value of the land equals or exceeds one-quarter of the rateable value of the house, although the Act does not apply as between the landlord and the tenant (s. 12 (2) (*iii*), *supra*, p. 9), yet if the house alone is sublet, the sub-tenant is entitled to the protection of the Act.

(2) The premises must have been sublet before proceedings for recovery of possession or ejectment were commenced.

The object of this provision is to limit the protection against ejectment afforded to a sub-tenant to one who is in possession under a *bonâ fide* sub-tenancy.

Where the interest of a tenant of a dwelling-house to which the Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of the Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued (s. 15 (3)).

This provision protects the sub-tenant where the tenant surrenders his tenancy (see *Barton* v. *Fincham*, (1921) 2 K.B. 291, per Scrutton, L.J., at p. 297), but not where, in consequence of the tenant having given notice to quit and the landlord having re-let the premises, the provisions of s. 5 (1) (*c*) apply (*Hylton* (*Lord*) v. *Heal*, (1921) 2 K.B. 438, *infra*, p. 48).

Section 15 (3) of the Act (*supra*) has been judicially explained in *Hylton* (*Lord*) v. *Heal* (*supra*). " I think," said Rowlatt, J. (at p. 449 of the Report), " that that sub-section merely means that where the interest of the original tenant has been lawfully determined, then any sub-tenant, assuming that he is entitled

to retain possession under the provisions of the Act, shall notwithstanding that the title under which he derived his interest has come to an end, continue to be tenant, the terms on which he retains possession being the same as those on which he would have held from the tenant if the tenancy had continued." "One has to consider," said Bailhache, J. (at p. 450 of the Report), "what rights the sub-tenant would have under the provisions of the Act. If under the Act the sub-tenant has a right to continue to be a sub-tenant, or has other rights, then these rights are preserved to him by the sub-section; but if he has no such rights and, if s. 5, sub-s. (1) (*c*)" (*infra*, p. 47), "is the provision which is applicable to his case, then s. 15, sub-s. (3), does not assist him."

If a sub-tenant is holding over only by virtue of the provisions of the Act, it is doubtful whether he can himself sublet the premises, for although, except where the context otherwise requires, the expression "tenant" used in the Act includes "sub-tenant" and any person from time to time deriving title under the original tenant (s. 12 (1) (*f*), (*g*), *supra*, p. 15), the position appears to be similar to that of the assignment of the statutory tenancy created by the Act (*supra*, p. 38).

CHAPTER IV.

Restriction on Right to Possession.

(1) Restrictions on Landlord's Right to Recover Possession.

Subject to the limitations contained in the Act, security and continuity of tenure are secured to the tenant of premises to which the Act applies, as to a dwelling-house, until the 24th June, 1923, and as to premises used solely for business, trade, or professional purposes or for the public service, until the 24th June, 1921.

In the application of the provisions of the Act it must be remembered that it is not an enabling but a restrictive measure, and that it does not confer on the Court power to make orders or give judgments for possession in cases in which otherwise there would be no power to do so (see *Goodwin* v. *Rhodes*, (1921) 2 K.B. 182, per Avory, J., at p. 185, per Salter, J., at p. 186; see also *Wilcock* v. *Booth* (1920), 89 L.J., K.B. 864, per Bray, J., at p. 866). The Act, therefore, confers no right of action upon a landlord which he did not possess before it was passed. The landlord must be entitled to possession of the premises independently of the Act before he can rely on any of the circumstances mentioned in s. 5 (1) (*infra*, pp. 45-53) as a ground for an order for possession (cf. Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, Rule 18). A mere breach of covenant by the tenant by no means always creates a ground for recovery of possession of the premises by the landlord. There must also be a right of re-entry either at Common Law, as for failure to pay rent, or under a provision contained in the agreement of tenancy, and in addition there must be the absence of any right to relief against forfeiture. In this connection regard must be had to the provisions as to notice of breach of covenant contained in s. 14 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c. 41).

(2) Conditions on which an Order or Judgment for the Recovery of Possession may be made or given.

It is provided by s. 5 (1) of the Act that no order or judgment for the recovery of possession of any premises to which the Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless :—

(1) The Court considers it reasonable to make such order or give such judgment ;

Although one of the statutory grounds mentioned below exists, the Court still has a discretion (which must, of course, be exercised judicially (*Chiverton* v. *Ede*, (1921) 2 K.B. 30, per McCardie, J., at p. 44), and need not make an order for possession unless, after considering all the circumstances, it appears reasonable to do so (see *Flint* v. *Ead* (1921), 37 T.L.R. 708). The position of the tenant and of the landlord is a matter relevant to be considered (*Benabo* v. *Horsley* (1920), 36 T.L.R. 859) ;

and (2) one at least of the following requisites is also present :—

(A) (1) some rent lawfully due from the tenant has not been paid, or (2) some other obligation of the tenancy (whether under the contract of tenancy or under the Act) so far as the same is consistent with the provisions of the Act has been broken or not performed (s. 5 (1) (*a*)).

(1) *Breach of the Duty to pay Rent.*—Under the earlier Acts, it was held that a tenant who was in arrear with his rent, but who tendered it after action for recovery of possession had been commenced, was not entitled to protection (see *Beavis* v. *Carman* (1920), 36 T.L.R. 396; see also *Kelly* v. *White*, (1920) W.N. 220). But under the present Act the Court has a discretion in such circumstances (see s. 5 (2), *infra*, p. 60), and, if the tenant is willing to pay the arrears, most judges refuse an order for possession. Thus, in *Reekes* v. *Shelly* ((1920), 36 T.L.R. 868), where a tenant within the Act of 1920 was in arrear with his rent, Sankey, J., made an order for possession with costs, but declared that the order would be discharged if within three weeks the tenant paid the arrears of rent and mesne profits (see also *Benabo* v. *Horsley* (1920), 36 T.L.R. 859 ; *Urwickee* v. *Gutkin* (1921), 55 I.L.T. 39).

(2) *Breach of an Obligation imposed by the Agreement of Tenancy or the Act.*—This would apply in all cases of agreement for tenancy, whether verbal or written, where there are definite obligations, and would cover all ordinary breaches of covenant, including breaches of covenants implied by law (see *Gildea* v. *Conway* (1919), 53 I.L.T. 166; *Waller & Son, Limited* v. *Thomas* (1921), 37 T.L.R. 325).

It is an obligation of a tenancy to give up possession at the end thereof, whether the tenancy is determined by effluxion of time or otherwise. Such an obligation, however, being inconsistent with the whole purpose of the Statute, the words "so far as the same is consistent with the provisions of the Act" have been added, so that failure to deliver up possession is not a ground for a landlord to apply for an order (see also *Artisans, Labourers and General Dwellings Co., Limited* v. *Whitaker,* (1919) 2 K.B. 301, per Astbury, J., at p. 304).

A tenant's refusal of facilities to the landlord to execute repairs as provided by s. 16 (2) (*supra*, p. 37) would constitute a breach of one of the obligations imposed on the tenant by the Act.

In an action to recover possession of premises alleged to be within the protection of the Act, where a breach of covenant or of an obligation under the tenancy agreement is proved against the tenant, the only question which is relevant to be considered by the Court is whether the circumstances are such as to make it reasonable to make an order for possession, and it is irrelevant to consider the question of alternative accommodation (*Waller and Son, Limited* v. *Thomas* (1921), 37 T.L.R. 325).

As to the meaning of the term "tenant" in s. 5 (1) (*a*) (*supra*), see *Hylton* (*Lord*) v. *Heal,* (1921) 2 K.B. 438, per Rowlatt, J., at p. 446;

or (B) (i) the tenant or any person residing with him (1) has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or (2) has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose (s. 5 (1) (*b*)).

A landlord who lives in a house and lets off part of it unfurnished to a tenant who is guilty of conduct which is a nuisance or annoyance would be an "adjoining occupier" within the meaning of the sub-section. Conduct by a tenant which prevents the landlord from letting adjoining premises is *ejusdem generis* with nuisance or annoyance to adjoining or neighbouring occupiers (*Patterson* v. *Culhane* (1916), 50 I.L.T. 116).

For a case in which it was held that the conduct was not a nuisance or annoyance to adjoining occupiers (see *Nevile* v. *Hardy* ((1921) 1 Ch. 404).

The object of the provision enabling the Court to make an order for possession where the tenant has been convicted of using the premises, or allowing them to be used, for an immoral or illegal purpose is to deal with cases in which the improper user of the premises is in furtherance of an unlawful purpose (*e.g.*, the use of premises for gaming or betting), and not with an isolated instance of illegality in carrying out a lawful purpose. So that, for example, where in the course of carrying on the lawful business of a licensed victualler a tenant commits an isolated breach of licensing regulations in respect of which he is convicted, this would not amount to a user of the premises for an illegal purpose (*Waller & Son, Limited* v. *Thomas*, (1921) 1 K.B. 541, per Lush, J., at p. 550, per McCardie, J., at p. 553);

or (ii) the condition of the dwelling-house has, in the opinion of the Court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person (s. 5 (1) (*b*)).

As was said in *Ferguson* v. *Butler* ((1918) 2 Sc. L.T. 228, at p. 229), a case in which the tenant had committed waste and created a nuisance, in reference to the corresponding provision in s. 1 (3) of the Act of 1915, "the tenant is, as it were, put on his good behaviour, if he is to be entitled to plead the benefits given to him by the Act."

Waste is either voluntary or permissive. Voluntary waste implies the doing of some act which tends to the destruction of the premises, as by pulling down houses or removing fixtures; or to the changing of their nature, as pulling down buildings and erecting new buildings, even though of greater value. Permissive waste implies an omission whereby damage results to the premises, as by suffering a house to fall into decay or by neglecting to keep a garden adjoining a house in a proper state of cultivation (see *Halsbury, Laws of England*, XVIII, p. 496, and cases there cited).

As to the meaning of the term "tenant" in s. 5 (1) (*b*) (*supra*), see *Hylton* (*Lord*) v. *Heal* ((1921) 2 K.B. 438, per Rowlatt, J., at p. 446);

or (c) the tenant has given notice to quit, and *in consequence* of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the Court, be seriously prejudiced if he could not obtain possession (s. 5 (1) (*c*)).

Cf. *Green-Price* v. *Webb* (1919), 36 T.L.R. 29 ; *Hunt* v. *Bliss* (1919), 36 T.L.R. 74.

The above provision applies only where, *in consequence* of the tenant having given notice to quit, the landlord has contracted to sell or let the premises (cf. *Barton* v. *Fincham*, (1921) 2 K.B. 291). It follows that, if, before the Act was passed, a tenant has given notice of his intention to quit and has subsequently withdrawn the notice, but the landlord has not accepted the withdrawal, the landlord cannot afterwards make a contract for sale and claim the benefit of the sub-section.

The notice to quit may have been given either before or after the passing of the Act (*Gilbert* v. *Jordan*, (1920) W.N. 309).

In *Gilbert* v. *Jordan* (*supra*) where, in consequence of a tenant's statement that he intended to give up possession at the expiration of his tenancy, the landlord had agreed to sell the premises with vacant possession, it was held that the tenant's undertaking to give up possession was equivalent to a notice to quit within the meaning of s. 5 (1) (*c*) (*supra*), and an order for possession was made.

Where a tenant has given notice to quit, and in consequence thereof the landlord has re-let the premises, the provisions of s. 5 (1) (*c*) (*supra*) apply also as against a sub-lessee of the tenant to whom the premises have been let after the notice to quit was given, and it is not necessary to show that the sub-lessee has himself given notice to quit (*Hylton* v. *Heal*, (1921) 2 K.B. 438 ; see also *Barrett* v. *Marshall* (1920), 54 I.L.T. 214).

In an application for possession under clauses (*a*), (*b*) or (*c*) of s. 5 (1) of the Act (*supra*) no question of alternative accommodation can arise, the only point for the consideration of the Court being whether it is reasonable to make an order or to give judgment for possession (*Waller & Son, Limited* v. *Thomas*, (1921) 1 K.B. 541).

(D) (1) *As regards a Dwelling-house.*—The dwelling-house is reasonably required by the landlord for occupation as a residence :

(i) For himself, or

(ii) For any person *bonâ fide* residing or to reside with him, or

(iii) For some person in his *whole-time* employment or in the *whole-time* employment of some tenant from him,

and (except as mentioned below, pp. 56, *et seq.*) the Court is satisfied that alternative accommodation, reasonably

equivalent as regards rent and suitability in all respects, is available (s. 5 (1) (*d*)).

A landlord who seeks to recover possession of a dwelling-house for occupation as a residence for himself or for the other persons specified must prove that the dwelling-house is *reasonably* required by him at the date when the order or judgment for recovery of possession is asked for, namely, at the hearing of the action (*Nevile* v. *Hardy*, (1921) 1 Ch. 404). It is not enough that the Court should be satisfied of the *bonâ fides* of the plaintiff's requirements, or that the Court should be left in doubt as to the reasonableness of the requirements. The plaintiff must satisfy the Court that the premises are reasonably required ; and that he is acting reasonably in requiring them. Whether the requirement is reasonable or not must depend on all the circumstances of the case (see *Epsom Grand Stand Association, Limited* v. *Clarke* (1919), 35 T.L.R. 525, per Bankes, L.J., at p. 526 ; *Sammon* v. *Cawley* (1919), 53 I.L.T. 224). (See also 55 I.L.T. and S.J. 145, cf. *Dumigan* v. *Kirkpatrick*, (1917) 2 Sc. L.T. 241.)

Where the property has been recently purchased, the purchaser can rely on a notice to quit given by the vendor (see *Macdonald's Trustees* v. *Wares*, (1917) 2 Sc.L.T. 137).

" Whole time employment " means actual and not prospective employment. The person must be already actually in the employment of the landlord or his tenant at the time when the order of ejectment is made, whether such person was or was not in his employ when the notice to vacate the premises was given (see *R.* v. *Rogers* (or *Rodgers*) *and Others : Ex parte Hodson* (1918), 118 L.T. 718). In an Irish case, *Johnston* v. *Curran* ((1921), 55 I.L.T. 4), it was held that a farmer was not entitled to recover possession of a house which he required for an agricultural labourer who had engaged to work for him when he recovered such possession, but who at the time was in the employment of another person. (See also *Great Northern Railway Co.* (*Ir.*) v. *Best* (1921), 55 I.L.T. 57.)

The provision that the person must be in the *whole-time* employment of the landlord or his tenant over-rides the decision in *Wall* v. *Gibbs* ((1920) W.N. 187) that under s. 1 (3) of the Act of 1915 it was not necessary that such person should be in the *exclusive* employ of the landlord.

It has been held that where the tenant of a dwelling-house carries on the business of letting lodgings therein, the premises are business premises within s. 13 (1) of the Act, and that, therefore,

proof by the landlord under s. 5 (1) (*d*) that he requires them as a residence for himself, and not for business, trade or professional purposes, and that alternative accommodation is available for the tenant will not entitle the landlord on the expiration of the tenancy to an order for possession (*Tompkins* v. *Rogers* (1921), 37 T.L.R. 299, 124 L.T. 478, following *Rolls* v. *Miller*, (1883) 27 Ch.D. 71 and *Hobson* v. *Tulloch*, (1898) 1 Ch.D. 424). It is submitted that this decision is unsatisfactory. The Court apparently overlooked the provisions of s. 12 (2) (*ii*) of the Act (*supra*, p. 7), and its attention does not appear to have been called to the decision in *Waller & Son, Limited* v. *Thomas* ((1921), 37 T.L.R. 324, *supra*, p. 8).

Where the premises, or a portion thereof, are used by the tenant as a residence, the landlord is not entitled to recover possession, unless he requires the premises for residential purposes. Thus, in an Irish case (*Laird* v. *Graves* (1921), 55 I.L.T. 55) the defendant was the tenant in occupation of a portion of certain premises and used the same for business purposes and as a residence. Other tenants were in occupation of the remainder of the premises, which they used solely for business purposes. The plaintiff, who was the landlord of the entire premises, sought to recover possession of the portion in the defendant's occupation in order to accommodate the other tenants, who required the entire premises for business purposes. *Held*, that the application of the Act to premises used for business purposes was limited to cases in which the premises sought to be recovered are used solely for business purposes, and that the landlord was not entitled to an order for possession.

(2) *As regards premises used solely for business, trade or professional purposes, or for the public service.*— The premises are reasonably required by the landlord for business, trade or professional purposes, or for the public service, and (except as mentioned below, pp. 56, *et seq.*) the Court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available (s. 13 (1) (*b*)).

The application of the Act to premises used solely for business purposes ceases on 24th June, 1921 (s. 13 (3)).

As to the meaning of the term "tenant" in s. 5 (1) (*d*) (*supra*), see *Hylton* (*Lord*) v. *Heal* ((1921) 2 K.B. 438, per Rowlatt, J., at p. 447);

or (E) The landlord is a local authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of the authority or undertaking, and the Court is satisfied as aforesaid as respects alternative accommodation (s. 5 (1) (*e*)).

The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament (s. 12 (1) (*i*)).

A local authority, a gas, electric, water, or railway company, or other public body, cannot obtain an order for possession without providing suitable alternative accommodation for the tenants.

or (F) The landlord became the landlord after service in any of His Majesty's Forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the Court as reasonably sufficient in the circumstances (s. 5 (1) (*f*)).

This appears to be the only case in which the Court is empowered to grant an order for possession of part of premises. The provision applies only where a landlord has acquired the house *after* service in the Army, Navy or Air Force during the war. "Service in any of His Majesty's Forces" would not, of course, include employment in munition works or in Government Departments created in consequence of the war. In *Fudge* v. *D'Ardenne* ((1916), 33 T.L.R. 106) it was held that an attested volunteer was not entitled to the benefit of the Courts (Emergency Powers) Act, 1916 (6 & 7 Geo. 5, c. 13) (which amended the Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78) in relation to officers and men of His Majesty's Forces), on the ground that he was not subject to military law until called out for service.

In considering whether the accommodation offered to the tenant is "reasonably sufficient in the circumstances," the Court is entitled to have regard not only to the tenant himself, but also to all those persons who usually and properly reside with him, including lodgers, and the amount of furniture that the tenant may need is for the discretion of the judge (*Chiverton* v. *Ede*, (1921) 2 K.B. 30). An order that would necessarily

break up the tenant's household and oblige him to send some of his furniture to a warehouse would not be justified.

As the accommodation offered must be such as is considered by the Court to be " reasonably sufficient in the circumstances," if the tenant has been carrying on a business, it would appear that the accommodation offered must be such as will permit him to continue to do so.

There is nothing to prevent a dwelling-house being conveyed to an ex-service man with the express object of enabling him to apply for an order for possession under s. 5 (1) (*f*) (*supra*), provided that he requires the premises for his personal occupation. Thus, in *Kentish* v. *Sneath* ((1921), 37 T.L.R. 586) in 1914 a house was let to the defendant under a lease expiring in September, 1920. The plaintiff served with the Forces from 1914 to 1919. In March, 1920, the plaintiff's father purchased the house. After the expiry of the lease the defendant remained in possession as tenant. In January, 1921, the plaintiff's father conveyed the house to the plaintiff, who then took proceedings against the defendant to recover possession under s. 5 (1) (*f*) of the Act (*supra*) in order that the plaintiff and his father and mother might all live together in the house. Reasonable accommodation in the house was offered to the defendant. *Held*, that the plaintiff was the landlord within s. 5 (1) (*f*) and, as he wanted the house for his personal occupation, and not merely in order that his father might obtain possession for his own occupation, the plaintiff was entitled to an order for possession.

or (G) The dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's Forces during the War (s. 5 (1) (*g*)).

This provision is to be read as meaning that the house is required *by the landlord* for the occupation of a former tenant, and it is not necessary for the party claiming possession to prove that he was himself the former tenant and sub-let the house on joining the Forces (*Messenger* v. *Hutton* (1921), 37 T.L.R. 464).

The Act is not an enabling Act, and it does not confer upon a tenant a new right of action which he had not before it was passed. Therefore, where a tenant had given up occupation of a dwelling-house in consequence of his service with the Forces during the war, and the landlord himself had gone into occupation, it was held that s. 5 (1) (*g*) of the Act (*supra*) did not

enable such former tenant to recover possession of the dwelling-house from the landlord (*Goodwin* v. *Rhodes* (1921), 37 T.L.R. 315) ;

or (H) The premises are *bonâ fide* required for the purpose of a scheme of reconstruction or improvement which appears to the Court to be desirable in the public interest (*but this provision applies only in the case of premises used solely for business, trade or professional purposes, or for the public service*) (s. 13 (1) (*c*)).

(The application of the Act to premises used solely for business purposes ceases on the 24th June, 1921.)

This provision refers to a scheme of reconstruction or improvement desirable in the interests of the general body of the public, such as widening of a street, the reconstruction of a "rookery," or some well-defined public improvement (*Mitchell* v. *Townend & Co.* (1921), 124 L.T. 480). There must be something advantageous to the whole community ; the provision does not apply to a private scheme for the substitution of one kind of business premises for another, even though, in fact, it might benefit a number of persons. Thus in *Mitchell v. Townend & Co.* (*supra*) it was held that a proposal by a landlord to convert a stable and warehouse into a training school for girls to be employed in his factories was not "a scheme of reconstruction or improvement" desirable in the public interest within the meaning of the Act.

In the case of a scheme of reconstruction or improvement under the Housing Acts, it is provided by the Housing, Town Planning, &c., Act, 1919 (9 & 10 Geo. 5, c. 35), s. 35, that nothing in the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, or any enactments amending that Act, shall prevent a local authority from obtaining possession of any house the possession of which is required by them for the purpose of exercising their powers under the Housing Acts or any scheme made under those Acts.

For the purpose of applying the provisions of the Act relating to recovery of possession the time to be considered is the time when the Court is asked to make the order. It is immaterial to consider the time when the notice to quit was given (*Harcourt* v. *Lowe* (1919), 35 T.L.R. 255 ; see also *Nevile* v. *Hardy*, (1921) 1 Ch. 404 ; *Kimpson* v. *Markham*, (1921) 2 K.B. 157).

The Act of 1915, s. 1 (3), provided that the Court might make an order for possession on various grounds "or on some other

ground which may be deemed satisfactory by the Court making such order." The following cases on this provision, which does not appear in the present Act, may be referred to :—

Vernon Investment Co. v. *Welch* (1919), 35 T.L.R. 511 ;
Stovin v. *Fairbrass* (1919), 35 T.L.R. 659 ;
Price v. *Pritchard* (1919), 35 T.L.R. 29 ;
Green-Price v. *Webb* (1919), 36 T.L.R. 29 ;
Hunt v. *Bliss* (1919), 36 T.L.R. 74 ;
Stephens v. *Tatham*, (1919) W.N. 334 ;
Grandison v. *Mackay*, (1919) 1 Sc.L.T. 95 ;
Smith v. *Barclay*, (1920) 1 Sc.L.T. 13 ;
Paul & Others v. *Blench*, (1919) 2 Sc.L.T. 191 ;
Hipps, Limited v. *Hughes* (1919), 53 I.L.T. 111.

(3) Alternative Accommodation.

Under s. 1 (1) (*c*) of the second Act of 1919, although the existence of alternative accommodation was an important and relevant matter to be taken into consideration, the Court was not precluded from making an order for possession in a case where there was no affirmative evidence of alternative accommodation, if under all the circumstances it appeared reasonable so to do (*Smith* v. *Bridgen*, (1920) W.N. 106).

Under the present Act, however, the existence of alternative accommodation reasonably equivalent as regards (1) rent and (2) suitability in all respects is a condition precedent to the making of an order in cases (D) and (E) (*supra*, pp. 48-51). In considering whether this condition is fulfilled in the case of premises used solely as a dwelling-house the Court would doubtless take into consideration, in addition to the question of rent, such matters as (1) the number of persons to be accommodated (cf. *Chiverton* v. *Ede*, (1921) 2 K.B. 30); (2) the nature and the amount of the accommodation offered (see *Nevile* v. *Hardy*, (1921) 1 Ch. 404; cf. *Chiverton* v. *Ede* (*supra*)); (3) the position of the house offered, and the accessibility of the premises to a railway station or other means of transit, and especially accessibility to the tenant's place of business (cf. *Wilcock* v. *Booth* (1920), 36 T.L.R. 213 ; *Bazalgette* v. *Hampson* (1920), 89 L.J., K.B. 476), and (4) the general type or character of the inhabitants, *e.g.*, it would scarcely be held that accommodation which necessitated the transfer of a family from an ordinary middle-class suburb to a manufacturing district would be " reasonably equivalent in all respects."

In *Bazalgette* v. *Hampson* (*supra*), decided under the Act of 1919, it was held by Avory, J., that it was the tenant's business

to do his best to find alternative accommodation, and that the onus was on him to prove the negative, rather than on the landlord to prove the affirmative (see also *Keiran* v. *Dunn* (1920), 54 I.L.T. 51).

Under s. 5 (1) (*d*) of the present Act, however, the onus is on the landlord to satisfy the Court by positive evidence at the hearing of the action that " alternative accommodation, reasonably equivalent as regards rent and suitability in all respects " is *then* available (*Nevile* v. *Hardy*, (1921) 1 Ch. 404). It is not sufficient for the landlord to prove that such alternative accommodation has been available at some time between the expiry of the notice to quit and the hearing of the action. The material date is the day of the hearing (*Kimpson* v. *Markham*, (1921) 2 K.B. 157).

In the case of premises used by the tenant partly as a dwelling-house and partly for business purposes, it was held under the second Act of 1919, s. 1 (1) (*c*), that a landlord claiming possession for his own occupation need only afford alternative accommodation of a dwelling-house without a shop (*Wilcock* v. *Booth* (1920), 36 T.L.R. 213). What is the position under the present Act ? In view of the provisions of s. 12 (2) (*ii*) (*supra*, p. 7) and of the requirement of s. 5 (1) (*d*) (*supra*, p. 48) that the alternative accommodation must be reasonably equivalent as regards rent and suitability *in all respects*, it seems clear that, where premises are occupied partly as a dwelling-house and partly as a shop, it is now necessary that the alternative accommodation for the tenant should afford not only dwelling-house accommodation, but also equivalent business facilities.

In certain circumstances it may be reasonable that a tenant should have two houses, and in that case it is not sufficient for the landlord who claims possession of one house to show that the tenant has alternative accommodation in the other. Thus, in *Crutchley* v. *White* ((1920), 36 T.L.R. 249), where a husband, who was separated from his wife by an order of Court, took a dwelling-house for his wife and children and resided elsewhere himself, and on the expiry of the term the landlord of the house where the wife and children were living took proceedings against him for the recovery of possession, it was held that accommodation for the wife and children at the place where the husband was residing could not be considered as alternative accommodation within the meaning of the Acts of 1915 and 1919, as the effect would be to cancel the separation order.

The decision in *Crutchley* v. *White* (*supra*) was followed in *Flint* v. *Ead* ((1921), 37 T.L.R. 708), where a landlord of a house

in the country sought to recover possession of it without finding "alternative accommodation," as it was occupied only occasionally by the tenant who lived in London. The County Court Judge had refused to make an order for possession on the ground that no alternative accommodation was available, and the Divisional Court refused to interfere, holding that there might be circumstances in which it would be reasonable for the tenant to have two houses.

In considering the question whether alternative accommodation "is available," the material time is the date when the Court is asked to give a judgment or make an order for recovery of possession, and not any earlier date (*Kimpson* v. *Markham*, (1921) 2 K.B. 157; see also *Nevile* v. *Hardy*, (1921) 1 Ch. 404; *Harcourt* v. *Lowe* (1919), 35 T.L.R. 255).

For circumstances in which it was held under the earlier Acts that alternative accommodation was available, see *M'Gilchrist* v. *Wallace*, (1919) 1 Sc.L.T. 309), and for circumstances in which it was held that alternative accommodation was not available, see *Nevile* v. *Hardy* (*supra*), *Lamb* v. *Graham* ((1919) 2 Sc.L.T. 28; and *Great Northern Railway Co.* (*Ir.*) v. *Best* (1921), 55 I.L.T. 57).

(4) Cases in which Proof of Alternative Accommodation is not required in applications under 5 (1) (*d*).

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (*d*) of s. 5 (1) of the Act (*supra*, pp. 48-49) in the following cases:—

(i) Where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment (s. 5 (1) (*i*)). (*This provision has no application to premises used solely for business, trade or professional purposes, or for the public service*) (s. 13 (1) (*d*).)

The exception connotes two things: (1) That the tenant is in the employment of the landlord, and (2) that the premises have been let to him in consequence of that employment.

In *Bond* v. *Pettle* (*The Times*, 1921, 15th Jan.) the appellant, an agricultural labourer, had been required as a condition of his employment to occupy a cottage for which 3s. a week was deducted from his wages. In November, 1919, his employment was terminated, but he continued to occupy the cottage, paying 3s. a week rent. Later, notice to quit was given by the respondent, but the appellant remained in possession. The landlord required the cottage for a person in his employment and no alternative accommodation was available. On proceedings being taken under the Small Tenements Recovery Act, 1838, the magistrates held that the case fell within exception (i) to s. 5 (1) (*d*) of the Act (*supra*) and made an order for possession. On appeal the Divisional Court held that the magistrates were wrong, as the man did not become a tenant within the Act until his employment had ceased, and he then became a tenant because he was no longer in the farmer's employ.

Where the tenant of a dwelling-house has been in the employment of his landlord and the dwelling-house has been let to him in consequence of that employment and he has ceased to be in that employment but has continued as tenant at an increased rent, and the landlord has subsequently given him notice to quit, the landlord is entitled to the benefit of s. 5 (1) (*i*) of the Act (*supra*), and is not bound, on taking proceedings for recovery of possession, to show the existence of alternative accommodation. Thus, in *Lever Bros., Limited* v. *Caton* ((1921), 37 T.L.R. 664) the plaintiffs in 1908 let a house to the defendant, an employé, on a weekly tenancy, the rent of 6s. 6d. being deducted from his wages. In January, 1920, the defendant left the employment of the plaintiffs, but continued in occupation of the house, and was given a rent-book. In August, 1920, the plaintiffs served on the defendant a notice to increase the rent to 8s. 5d. and also, as a necessary preliminary, a notice to quit. On the expiration of the notice the defendant became a statutory tenant and he paid the increased rent. In September, 1920, the plaintiffs, who required accommodation for other employés, served another notice to quit and on its expiration took proceedings to recover possession. No evidence of alternative accommodation was given, the plaintiffs relying on s. 5 (1) (*i*) of the Act (*supra*). The County Court Judge held that he was bound by the decision in *Bond* v. *Pettle* (*supra*), and refused an order. On appeal to the Divisional Court it was held that as the defendant was a tenant before his employment ceased, *Bond* v. *Pettle* (*supra*) did not apply, and that the plaintiffs were entitled to the benefit of s. 5 (1) (*i*) of the Act (*supra*), but that as the judge must be satisfied that it is reasonable to make an order for possession, the case

must go back to him for a new trial that he might determine the question of reasonableness.

The distinction between *Bond* v. *Pettle* (*supra*) and *Lever Bros., Limited* v. *Caton* (*supra*) is that in the former case there was no letting in consequence of employment at all ; the appellant did not become a tenant until after the employment had ceased (cf. *National Steam Car Co.* v. *Barham* (1920), 122 L.T. 315, *supra*, p. 14). In the latter case there was a tenancy during the term of the employment.

Section 5 (1) (*i*) of the Act (*supra*) is very wide in its terms, and from the decision in *Lever Bros., Limited* v. *Caton* (*supra*) it would appear that if the tenant had at any time been in the employment of the landlord or a former landlord, and the dwelling-house had been let to him in consequence of that employment, the provisions apply, Bray, J., saying in that case (at p. 665 of the Report) : " I cannot resist the conclusion that the giving of the notice to quit and to increase the rent created a new tenancy in law, but are we, under the statute, to look only to that or are we to look to the original letting in consequence of the employment ? I think that we must go back to the original letting, which here was in consequence of the employment."

In an Irish case, *Great Northern Railway Co.* (*Ir.*) v. *Best* ((1921), 55 I.L.T. 57), the plaintiffs let to the defendant, an employé, a house at a weekly rental of 5s. (which was deducted from his wages), with a proviso that the tenancy was to terminate with the employment. Prior to the 4th August, 1914, the employment was terminated, but the defendant, who retired on a pension, continued to occupy the house at the same rent as before. On the plaintiffs, who required the house for another employé, seeking to obtain possession thereof without providing alternative accommodation under s. 5 (1) (*d*), it was held that they were not entitled to rely on s. 5 (1) (*i*) of the Act (*supra*) as the tenancy, which was a condition of the employment, had terminated when the employment ceased, and that it could not be said that after the employment ceased the house was let to the tenant in consequence of the employment.

The distinction between *Great Northern Railway Co.* (*Ir.*) v. *Best* and *Lever Bros., Limited* v. *Caton* (*supra*) probably is that in the former the employment had ceased before the passing of any of the Rent Restrictions Acts and the tenant remained in possession independently of such Acts, while in the latter case the employé became a statutory tenant on the cessation of his employment, and as such held subject to all the conditions

of the original tenancy (s. 15 (1)), and by a legal fiction he still held the premises subject to the condition that he was in the landlord's employment, although in fact he had ceased to be an employé.

According to the definition in s. 12 (1) (*g*), the term " tenant " as used in the Act may include the widow of a tenant dying intestate " except where the context otherwise requires." It is obvious that the term is used in s. 5 (1) (*d*), proviso (*i*) (*supra*, p. 56), in a restricted sense. Where the tenant who was in the employment of the landlord has died intestate, it could not be said that his widow was the tenant, and that as she had not herself been in the employment of the landlord, an order for possession could not be made against her unless alternative accommodation was available (see *Hylton* (*Lord*) v. *Heal*, (1921) 2 K.B. 438, per Rowlatt, J., at p. 447) ;

or (ii) where the Court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding (s. 5 (1) (*ii*)).

It is not provided that the certificate referred to is to be conclusive, and it would, therefore, appear that it is open to the Court to hear evidence which would prove that the making of an order for possession would not be reasonable.

For the substituted paragraph in the case of Ireland, see s. 18 (2) (*e*) (*infra*, p. 92) ;

or (iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's Forces during the War (s. 5 (1) (*iii*)).

This clause applies to a landlord who vacated the house in order to serve in the Army, Navy or Air Force during the war. " Service in His Majesty's Forces " would not, of course, include employment in munition works or in Government Departments created in consequence of the war.

" Landlord " in the above provision would not include any person other than the person who served in the Forces, *e.g.*, it would not include the widow of such person (cf. *Hylton* (*Lord*) v. *Heal*, (1921) 2 K.B. 438);

or (iv) where :—

(1) The landlord became the landlord :—

(A) In the case of 1915 Act houses (see *supra*, p. 2), before the 30th September, 1917 ; or

(B) in the case of 1919 Act houses (see *supra*, p. 2), before the 5th March, 1919 ; or

(C) in the case of a dwelling-house to which the present Act applies, but the Acts of 1915 to 1919 did not apply (see *supra*, p. 4), before the 20th May 1920 ; and

(2) In the opinion of the Court greater hardship would be caused by refusing an order for possession than by granting it (s. 5 (1) (*iv*); see also *Dowling* v. *Butler* (1920), 54 I.L.T. & S.J. 199 ; *Comyn* v. *Leask* (1921), 55 I.L.T. 13 ; *Great Northern Railway Co.* (*Ir.*) v. *Best* (1921), 55 I.L.T. 57 ; cf. *Stovin* v. *Fairbrass* (1919), 35 T.L.R. 659.

Where the house has been purchased subsequently to the dates mentioned above, the existence of alternative accommodation must be proved.

In an Irish case, *Barrett* v. *Marshall* ((1920), 54 I.L.T. 214), it was held to be sufficient to constitute a purchaser of a 1920 Act house the landlord within the meaning of the above provision if the contract of sale was signed before the 20th May, 1920.

It must be borne in mind that even in a case where, by reason of the above provisions, no proof of the existence of alternative accommodation is required, the making of an order for possession is still a matter for the discretion of the Court. The Act does not say that in such a case an order for possession *shall* be made ; it merely removes the necessity of providing alternative accommodation, if the circumstances would otherwise warrant the making of such an order.

(5) Power of the Court to Postpone Date of Possession and to Rescind or Vary Existing Orders or Judgments for Possession.

At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any

dwelling-house to which the Act applies, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of the Act, and not executed, at any subsequent time, the Court may (1) adjourn the application, or (2) stay or suspend execution on any such order or judgment, or (3) postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the Court thinks fit, and, if such conditions are complied with, the Court may, if it thinks fit, discharge or rescind any such order or judgment (s. 5 (2), see also *Reekes* v. *Shelley* (1920), 36 T.L.R. 868 ; *Benabo* v. *Horsley* (1920), 36 T.L.R 859 ; *Urwickee* v. *Gutkin* (1921), 55 I.L.T. 39).

Under the Act of 1915, where a County Court Judge, in making an order for possession against a tenant who was in arrear with his rent, had directed that execution should be stayed so long as the tenant continued to pay the current rent and arrears at the rate of £1 a week, it was held by the Divisional Court (Salter and Roche, JJ.) that it was not a judicial exercise of discretion for the Judge to stay execution indefinitely, as by so doing he had created a new tenancy of indefinite duration (*Kelly* v. *White ; Penn Gaskell* v. *Roberts*, (1920) W.N. 220). This decision was based on s. 1 (3) of the Act of 1915, and apparently s. 1 (2) of the second Act of 1919 was not brought to the notice of the Court.

In view of the express mention of payment of arrears in the above provisions of s. 5 (2) of the present Act, it is submitted that the above decision can no longer be relied on, and that there is nothing to prevent a Judge from staying execution until the expiration of the Act.

Where any order or judgment has been made or given before the passing of the Act, but not executed, and, in the opinion of the Court, the order or judgment would not have been made or given if the Act had been in force at the time when such order or judgment was made or given, the Court may, on application by the tenant, rescind or vary such order or judgment in such manner as the Court may think fit for the purpose of giving effect to the Act (s. 5 (3)).

This provision, which has no application to an order or judgment made or given by consent of the parties (*Wellesley* v. *White*, (1921) 2 K.B. 205), does not impose on the Court an absolute obligation to rescind or vary the order or judgment in the circumstances mentioned, but merely gives the Court a discretion to re-open the matter, if this course appears to be desirable (*Taylor* v. *Faires* (1920), 37 T.L.R. 55 ; see also *Comyn* v. *Leask* (1921), 55 I.L.T. 13). Therefore, where an order for possession has been made before the present Act, there being then no answer to the application, the Court will not necessarily rescind the order, even though the present Act would have protected the tenant (*Taylor* v. *Faires* (*supra*)).

(6) Warrants for Possession.

Notwithstanding anything in s. 143 of the County Courts Act, 1888, or in s. 1 of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which the Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the Court shall from time to time, whether before or after the expiration of such three months, direct (s. 5 (4)).

By s. 143 of the County Courts Act, 1888 (51 & 52 Vict., c. 43), a warrant for possession, whenever issued, is to bear date on the day next after the last day named in the judgment for delivery of possession and continues in force for three months from such date and no longer. By s. 1 of the Small Tenements Recovery Act, 1838 (1 & 2 Vict., c. 74), the warrant must be executed within thirty clear days from its date.

(7) Damages for Tenant who is ejected owing to Landlord's Misrepresentations.

Where a landlord has obtained an order or judgment for possession or ejectment under s. 5 of the Act, on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the Court that

the order was obtained by misrepresentation or the concealment of material facts, the Court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment (s. 5 (6)).

This provision is intended to prevent abuse of the rights given by s. 5 (1) (*d*) of the Act to landlords who require premises for their own occupation (see *supra*, p. 48). There appears to be no power for the Court to rescind or revoke the order or judgment for possession in such a case, or in any other case where the true facts have not been disclosed to the Court.

CHAPTER V.

Further Restrictions and Obligations on Landlords.

(1) Restriction on Levy of Distress for Rent.

No distress for the rent of any dwelling-house to which the Act applies (as to which see *supra*, pp. 4, *et seq.*) shall be levied except with the leave of the County Court, and the Court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by s. 5 of the Act (*supra*, p. 60) in relation to applications for the recovery of possession (s. 6).

The above provisions (i) have no application to distress levied under s. 160 of the County Courts Act, 1888, and (ii) are in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914, or any Act amending or extending the same, except so far as those provisions are repealed by the present Act (s. 6).

The County Courts Act, 1888 (51 & 52 Vict., c. 43), s. 160, provides means whereby the landlord of a tenement can protect his rights by distress where execution is being levied on the tenant's property by other creditors.

The only provisions of the Courts (Emergency Powers) Acts, 1914-1917, repealed by the present Act are ss. 4, 5 and 7 of the Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25) (*supra*, p. 2). It follows that even in a case in which the above provisions as to distress have no application, it may be necessary for a landlord, before levying a distress, to obtain the leave of the Court under s. 1 (1) of the Courts (Emergency Powers)

Act, 1914 (4 & 5 Geo. 5, c. 78) as amended and extended by the Courts (Emergency Powers) (Amendment) Act, 1916 (6 & 7 Geo. 5, c. 13), s. 1, the Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25), s. 8, and the War Emergency Laws (Continuance) Act, 1920 (10 Geo. 5, c. 5), s. 1 and First Schedule.

(2) Restrictions on Premiums—"Key Money."

Except in the case of the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy, no person shall, as a condition of the grant, renewal or continuance of a tenancy or sub-tenancy of any dwelling-house to which the Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the 25th day of March, 1920, the amount or value thereof shall be recoverable by the person by whom it was made or given (s. 8 (1), (3)).

But where any agreement has been made since the 25th March, 1920, but before the passing of the Act (2nd July, 1920) for the tenancy of a house to which the Act applies, but the earlier Acts did not apply (as to which see *supra*, pp. 2, 4), and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of s. 8 of the Act, be voidable at the option of either party thereto (s. 8 (1)).

A person requiring any payment or the giving of any consideration in contravention of the above-mentioned provision is liable on summary conviction to a fine not exceeding £100, and the Court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by the Act (s. 8 (2)).

"Pecuniary consideration" would cover a case where, as a condition of granting a tenancy, a landlord requires the prospective tenant to purchase furniture, whether the price asked is fair or not (see 64 S.J., p. 249; 10 *Law Journal County Court Reporter* (1921), p. 3).

This section, being a penal one, must be strictly construed. It refers to the receipt of a premium by the person actually granting the tenancy, and does not prevent a premium being received by a third party. Thus, in *Remmington* v. *Larchin* ((1921) *The Times*, March 16, June 15) the respondent, who was the tenant of a house under a three years' agreement, when one year had expired wished to give up the tenancy, and the landlord agreed to release him if he found a suitable tenant. The appellant paid to the tenant £180, and was granted a new tenancy by the landlord. Subsequently the Act of 1920 was passed, and the appellant sought to recover back the premium. The County Court Judge held that the Section did not apply. On appeal the Judges of the Divisional Court differed. Bailhache, J., thought that the County Court Judge was wrong, as it would be ridiculous to suppose that a tenant could profiteer in the rent when the landlord could not. Shearman, J., on the other hand, held that "person" in s. 8 (*supra*) meant "landlord." On appeal to the Court of Appeal the appeal was dismissed, Bankes, L. J. saying that although the matter was not plain he preferred the view of Mr. Justice Shearman that the Section did not apply, in which judgment Scrutton and Atkin, L.JJ., concurred. (See 65 S.J. 636.)

An assignment of the residue of the term of a lease (even though the lease was originally for a term of less than fourteen years) is not a "grant" of a tenancy within the meaning of s. 8 (1) of the Act (*supra*), and the payment of a premium in such a case is not prohibited (*Mason, Herring & Brooks* v. *Harris* (1921), 37 T.L.R. 334).

Under s. 1 (2) of the Act of 1915 premiums for the grant of leases for ninety-nine years at a low rent, although admittedly under a scheme for the benefit of tenants, were held to be irrecoverable (*Rees* v. *Marquis of Bute*, (1916) 2 Ch. 64). The Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25), s. 4 (1), authorised premiums on the grant of leases for twenty-one years or upwards. This term is now reduced to fourteen years.

The Act of 1915, s. 1 (2), enabled a tenant to recover or deduct any fine, premium or other like sum paid in respect of a 1915 Act house after the 25th November, 1915, unless such payment was made under an agreement entered into before the 4th August, 1914. The first Act of 1919, s. 4 (*ii*), applied this provision to 1919

Act houses, substituting the 4th March, 1919, for the 25th November, 1915. The effect of s. 19 (3) of the present Act and s. 38 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), is to preserve these rights to the tenants of such houses.

(3) Misleading Entries in Rent Book.

If (A) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of the Act, or of any of the previous Acts, is irrecoverable; or (B) where such entry has, before the passing of the Act, been made by or on behalf of any landlord, and the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days, that person or landlord shall, on summary conviction, be liable to a fine not exceeding £10, unless he proves that he acted innocently and without intent to deceive (s. 14 (2)).

It will be observed that, contrary to the general rule in criminal proceedings, it is not for the prosecution to prove the guilt of the defendant, but for the latter to prove that he acted innocently.

(4) Furnished Premises.

Except as mentioned below, the Act has no application to furnished premises (s. 12 (2) (*i*), *supra*, p. 9).

(A) *Limitation of Rent of Houses let Furnished.*

Where any person lets, or has, before the passing of the Act, let any dwelling-house to which the Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the County Court on the application of the lessee that the rent charged is yielding or will yield to the lessor a profit more than 25 per cent. in excess of the normal profit (*i.e.*, the profit which might reasonably have been expected from a similar letting in the year ending on the 3rd August, 1914), the Court may order that the rent, so

far as it exceeds such sum as would yield such normal profit and 25 per cent. shall be irrecoverable, and that the amount of any payment of rent in excess of such sum made *in respect of any period after the passing of the Act* (2nd July, 1920), shall be repaid to the lessee (s. 9 (1), (2)).

The above provisions, which do not apply to premises used solely for business, trade or professional purposes or for the public service (s. 13 (1) (*e*)), replace similar provisions contained in the first Act of 1919, s. 6. The effect of s. 19 (3) of the present Act and of s. 38 of the Interpretation Act, 1889, is to substitute for the 2nd July, 1920, the 2nd April, 1919, in the case of 1915 Act houses and 1919 Act houses.

In the application of the above provisions it should be borne in mind (1) that the section applies only to dwelling-houses coming within the limits of value applicable to unfurnished premises, (2) that for the purposes of the Act a dwelling-house may consist of a single room (s. 12 (2) *supra*, p. 4), (3) that it is only payments made in respect of a period after the passing of the Act that can be recovered, (4) that the test being *profit*, not rent, the Court, in arriving at its decision, must consider all the circumstances, including the increased cost of living and labour, and (5) that the onus of proof is on the tenant.

Letting lodgings does not, apparently, fall within the above provisions (see *Redman : Law of Landlord and Tenant* (7th ed.), p. 17 ; Supplement, p. 33).

(B) *Penalty for Excessive Charges for Furnished Lettings.*

Where any person after the passing of the Act (2nd July, 1920) lets any dwelling-house to which the Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the lessor a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under s. 9 of the Act (*i.e.*, 25 per cent. in excess of the " normal profit " as above defined, *supra*, p. 67), is extortionate, then, without prejudice to any other remedy under the Act, the lessor shall be liable on summary conviction to a fine not exceeding £100, and the Court by which he is convicted may order that the rent so far as it exceeds the amount permitted by s. 9 of the Act (*supra*)

shall be irrecoverable and that the amount of any such excess shall be repaid to the lessee, but any such order shall be in lieu of any other method of recovery prescribed by the Act (s. 10).

The above provisions do not apply to premises used solely for business, trade or professional purposes or for the public service (s. 13 (1) (*e*)).

Letting lodgings does not, apparently, fall within the above provisions (see *Redman : Law of Landlord and Tenant* (7th ed.), p. 17; Supplement, p. 33).

It should be remembered that the provisions of s. 5 of the Act have no application to furnished premises, and that a tenant thereof has not the security of tenure enjoyed by a tenant of unfurnished premises. There is nothing to prevent the landlord from terminating the tenancy, and ejecting the tenant, if he fails to vacate the premises.

CHAPTER VI.

Mortgagee and Mortgagor.

(1) Mortgages to which the Act applies.

Except as hereinafter mentioned (pp. 71–74), the provisions of the Act relating to mortgages apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which the Act applies (as to which, see *supra*, p. 4), or any interest therein (s. 12 (4)).

"Mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897 (s. 12 (1) (*h*)).

The Act does not define the term "mortgage," and there is some doubt as to the nature of the securities intended to be included. All that is said is that "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897 (38 & 39 Vict. c. 87; 60 & 61 Vict. c. 65) (s. 12 (1) (*h*)), which charge does not pass an interest in the land itself (see *Brickdale and Sheldon: The Land Transfer Acts*, 1875 *and* 1897 (2nd ed.), p. 104). As it was considered necessary to expressly mention such charges, it would seem that the term "mortgage" is not used in the Act in an unusually extensive sense (cf. *Jones* v. *Woodward* (1917), 116 L.T. 378, per Sargant, J., at p. 379); certainly not with the wide meaning that it has in the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 2, where mortgage includes "any charge on any property for securing money or money's worth." A sub-mortgage is doubtless protected as (except as mentioned below, pp. 71–74) the Act applies to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which the Act applies, *or any interest therein* (s. 12 (4) (*supra*), and the expressions

"mortgagee" and "mortgagor" include any person from time to time deriving title under the original mortgagee or mortgagor (s. 12 (1) (*f*) (*supra*, p. 16)).

In *London County and Westminster Bank, Limited* v. *Tompkins* ((1918) 1 K.B. 515), the Court of Appeal discussed the meaning of the term " mortgage " as used in s. 1 (4) of the Act of 1915 (replaced by s. 7 of the present Act). Pickford, L.J., was of opinion that " mortgage " there meant a conveyance of property subject to redemption, though, of course, it may be that, as in the case of a second mortgage, the legal estate is outstanding in some other person (see p. 522 of the Report). This was also the view of Sargant, J., in *Jones* v. *Woodward* ((1917), 116 L.T. 378). Bankes and Scrutton, L.JJ., however, considered that the expression " mortgage " should not be thus limited, but that it included an equitable mortgage, although the latter was taken out of the section by the exception in s. 2 (4) (*b*) of the Act (replaced by s. 12 (4) (*b*) of the present Act).

(2) Mortgages to which the Act does not apply.

The provisions of the Act do not apply :—

(A) To any mortgage comprising one or more dwelling-houses to which the Act applies and other land, if the rateable value of such dwelling-houses is *less than one-tenth* of the rateable value of the whole of the land comprised in the mortgage (s. 12 (4) (*a*)).

But when a mortgage comprises one or more dwelling-houses to which the Act applies and other land, and the rateable value of such dwelling-houses is *more than one-tenth* of the rateable value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment.

At the expiration of the said calendar month's notice the Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a sepaarate mortgage for the respective

portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned. The mortgagor shall, however, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution (s. 12 (5)).

The above provisions meet the difficulty which arose in *Re Dunn's Application* ((1920), 149, L.T. Jo. 215), where it was held that where there was a mortgage of two houses, one only of which was within the Acts of 1915 and 1919, the mortgagee was precluded from enforcing the security even in respect of the house to which the Acts did not apply.

Illustrations.

(1) Three villas and a house are comprised in one mortgage. Both the standard rent and the rateable value of each of the villas exceeds £105 per annum, but the rateable value of the house is only £30. The Act, therefore, applies to the house, but not to the villas. The rateable value of the house being less than one-tenth of the rateable value of the whole of the premises comprised in the mortgage, the Act does not apply to the mortgage.

(2) A large villa and a smaller house are comprised in one mortgage. The standard rent of the villa exceeds £105, and its rateable value is £200. The rateable value of the house is £30. The Act, therefore, applies to the house, but not to the villa. The rateable value of the house being more than one-tenth of the rateable value of the whole of the premises comprised in the mortgage, the Act applies to the mortgage, but the mortgagee may apportion the principal money between the two properties.

(3) Two shops and four cottages are comprised in one mortgage. Both the standard rent and the rateable value of each of the shops exceeds £105, but the rateable value of each of the cottages is £10. The Act, therefore, applies to the cottages but not to the shops. The rateable value of the cottages being more than one-tenth of the rateable value of the whole of the premises, comprised in the mortgage, the Act applies to the mortgage, but the mortgagee may apportion the principal money between the shops and cottages.

(B) To an equitable charge by deposit of title deeds or otherwise (s. 12 (4) (*b*)).

In *Jones* v. *Woodward* ((1917), 116 L.T. 378), decided on the similar words in s. 2 (4) of the Act of 1915, it was contended that the exception referred only to an equitable charge by deposit of title deeds or other documents, but it was held by Sargant, J.,

that the words after " charge " were really superfluous, and that the effect of the words " or otherwise " was to make the exception read " an equitable charge effected by deposit of deeds or by some other process."

In deciding whether a security is a " mortgage " protected by s. 12 (4) of the Act, or an " equitable charge " within the exception, and so outside the Act, it is submitted that the correct distinction is that drawn by Sargant, J., in *Jones* v. *Woodward* (*supra*) when dealing with the Act of 1915, and that the contrast in the Act is between (1) mortgages which convey the property out and out, but give a right to redeem, and (2) transactions which do not convey and are enforceable only in equity as securities for a merely temporary advance (see also *London County and Westminster Bank, Limited* v. *Tompkins*, (1918) 1 K.B. 515, per Pickford, L.J., at p. 522). If this view is correct, a second mortgage by conveyance of the equity of redemption falls within the first class and is protected by the Act, while a covenant to surrender copyholds by way of mortgage in the ordinary form, without an actual surrender, would fall within the second class as an equitable charge, and so be outside the Act. (Cf. the classification of securities adopted by Shearman, J., in *London County and Westminster Bank, Limited* v. *Tompkins* (*supra*), at p. 526 of the Report (see also 117 L.T. 311, at p. 313), under which a second mortgage would not be included in the term " mortgage " as used in s. 12 (4) of the Act, but would be an " equitable charge " within the meaning of s. 12 (4) (*b*).)

In *Jones* v. *Woodward* ((1917), 116 L.T. 378), a document whereby a builder charged certain dwelling-houses to secure all money due and to become due, and agreed to give the lender formal and proper charges within a fortnight, was held by Sargant, J., to be an equitable charge within the exception contained in s. 2 (4) (*b*) of the Act of 1915.

In *London County and Westminster Bank, Limited* v. *Tompkins* ((1918) 1 K.B. 515) the defendant as security for an overdraft deposited with the plaintiff bank the title deeds of certain houses to which the Act of 1915 applied, and executed a deed whereby he undertook to pay the overdraft on demand, charged his interest in the property comprised in the deeds with payment of the said moneys, declared that the bank should be deemed mortgagees of the premises charged ; undertook to execute on request a legal or other mortgage ; declared that the bank might exercise certain powers of sale ; declared that he would hold the property comprised in the security as trustee for the bank and undertook to convey the same as directed by the bank ; with power for the bank to remove him from being a trustee

and to appoint new trustees and to make a declaration vesting the borrower's estate in the new trustees ; and an appointment by the borrower of certain officials of the bank as his attorneys for executing a conveyance of the property charged. It was held by the Court of Appeal (Pickford, Bankes, and Scrutton, L.JJ.) that the document was an equitable charge within s. 2 (4) (*b*) of the Act of 1915 (replaced by s. 12 (4) (*b*) of the present Act), and was therefore excepted from the operation of s. 1 (4) of the Act (replaced by s. 7 of the present Act).

(c) To any mortgage which is created after the passing of the Act, *i.e.*, after the 2nd July, 1920 (s. 12 (4) (*c*)).

(d) To a mortgage of premises which are in the occupation of the mortgagor, unless the premises have at any time been "let" under circumstances bringing them within the Act or any of the earlier Acts.

Since the Act applies only to premises which are "let" (s. 12 (2), *supra*, p. 13), it does not apply to premises in the occupation of the owner until they are let ; but as soon as this occurs the provisions of the Act relating to mortgages would apply, and would continue to do so, notwithstanding the fact that the owner is himself again in occupation (s. 12 (6) ; cf. *King* v. *York* ((1919) 88 L.J., K.B. 839). It is doubtful whether a mortgage of a house in the occupation of the owner is brought within the Act by reason of its containing an attornment clause. In any event, the question cannot arise unless the rent reserved equals or exceeds two-thirds of the rateable value of the premises (see s. 12 (7) (*supra*, p. 12).

(3) Restrictions on Increasing Mortgage Interest.

Where the rate of interest on a mortgage to which the Act applies has been, since the 25th March, 1920, or is hereafter increased, then, if the increased rate of interest exceeds the "standard rate of interest" as hereinafter defined (p. 75) by more than the amount permitted under the Act (*infra*, p. 75), the amount of such excess is irrecoverable from the mortgagor, *notwithstanding any agreement to the contrary* (s. 1).

In the case of houses to which the Acts of 1915 to 1919 applied (*supra*, p. 2), the increase of mortgage interest was

(with certain exceptions) on the 25th March 1920, prevented by the provisions of those Acts.

The effect of s. 19 (3) of the Act and of s. 38 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), is to substitute for the 25th March, 1920, the 3rd August, 1914, in the case of the 1915 Act houses, and the 25th December, 1918, in the case of the 1919 Act houses.

In a Scotch case, *Dickson* v. *Weir* ((1918) 2 Sc.L.T. 237), it was held that a creditor in bond could not demand payment of a rate of interest higher than the pre-war rate.

(4) Standard Rate of Interest.

For the purposes of the Act "standard rate of interest" means :—

(i) In the case of a mortgage in force on the 3rd August, 1914, the rate of interest payable at that date ; or

(ii) in the case of a mortgage created since the 3rd August, 1914, the original rate of interest (s. 12 (1) (*b*)).

It will be observed that while Standard Rent is fixed for the house (s. 12 (1) (*a*) (*supra*, p. 19), Standard Rate of Interest is fixed only for the particular mortgage.

Where it is agreed that the rate of interest shall be reduced on punctual payment, the lower rate is probably the "standard rate of interest ; but where it is provided that the mortgagee shall receive a certain rate of interest free of income tax, it would appear that the gross amount paid is the "standard rate of interest" (cf. *Westminster and General Properties and Investment Company and Another* v. *Simmons* (1919), 35 T.L.R. 669 ; *Isaacs* v. *Tittlebaum* (1920), 149 L.T. 84 ; *Lawrie* v. *Woods*, (1920) 2 I.R. 106 (*supra*, pp. 20–21) ; *Mackworth* v. *Hellard* (1921), 37 T.L.R. 469 (*supra*, p. 13)).

(5) Permitted Increase in Rate of Mortgage Interest.

The rate of interest payable in respect of a mortgage to which the Act applies (as to which, see *supra*, p. 70) may be increased by an amount not exceeding 1 per cent. per annum above the standard rate, provided that :—

(A) The rate shall not be increased so as to exceed 6½ per cent. per annum ; and

(B) in the case of a dwelling-house to which the earlier Acts applied (*i.e.*, "1915 Act houses" and "1919 Act houses"), the increase during a period of one year after the passing of the Act (2nd July, 1920) shall not exceed ½ per cent. per annum (s. 4).

The increase of ½ per cent. permitted by s. 4 of the first Act of 1919 to be added to the standard rate of interest in respect of a mortgage on a 1919 Act house is included in the above-mentioned increase, so that if this amount has already been added, credit must be given for it in calculating the increase permitted by the present Act.*

Illustrations.

(1) A house in London let in 1914 at a rental of £32 per annum was mortgaged in 1915 for £300 at 5 per cent. interest. The mortgagee may increase the interest to 5½ per cent., and after the 2nd July, 1921, to 6 per cent., but no more.

(2) A house in London let in 1914 at a rental of £60 per annum was mortgaged in 1916 for £400 at 5 per cent. interest. The mortgagee increased the interest to 5½ per cent. under the provisions of s. 4 of the Act of 1919. The interest may be increased by another ½ per cent., but no more.

(3) A house in London let in 1914 at a rental of £60 per annum was mortgaged in 1918 for £500 at 5½ per cent. interest. The mortgagee not having previously increased the rate of interest may increase it to 6½ per cent.

(4) A house in London let in 1914 at a rental of £90 per annum was mortgaged in 1918 for £500 at 6 per cent. interest. The rate of interest may be increased to 6½ per cent., but no more.

It would appear that, as in the case of rent, the material date to be considered on the question when an increase of mortgage interest is made is the date when the increase becomes effective, that is, the date when the increased interest begins to accrue, and not any earlier date at which the increase has been agreed upon between mortgagor and mortgagee (cf. *Goldsmith* v. *Orr* (1920), 36 T.L.R. 731; *Raikes* v. *Ogle and Another* (1920), 37 T.L.R. 261, *supra*, p. 18).

Nothing in the Act shall be taken to authorise any increase in the rate of interest on a mortgage, except in respect of a period during which, but for the Act, the security could be enforced (s. 3 (1)).

The Act provides no form of notice of intention to increase the rate of interest payable under a mortgage, and opinion is greatly divided as to the manner in which an increase can legally

* In an Appendix (p. 97) will be found a Table of Permissible Increases of Mortgage Interest.

be effected. It has been suggested that, as s. 7 (*a*) (*infra*, p. 78) provides that, so long as interest at the rate *permitted* by the Act is paid, it shall not be lawful for a mortgagee under a mortgage to which the Act applies to call in his mortgage or take any steps for enforcing his security, all that a mortgagee has to do is to give notice that the interest will be increased up to the permitted rate, and that if the mortgagor does not pay the increased interest, the mortgage may be called in (see 64 S.J., p. 695).

It must, however, always be remembered that the Act is not an enabling but a restrictive Act (cf. *Goodwin* v. *Rhodes*, (1921) 2 K.B. 182), and does not confer on a mortgagee any power of increasing mortgage interest which he would not otherwise possess. Apart from the Act the rate of interest payable under a mortgage can be increased only by the agreement of the parties (see *Fisher: Law of Mortgages* (6th ed.), p. 924).

Apart from the present Act and the earlier Acts, the security created by a mortgage can be enforced immediately after the time appointed for redemption, although before exercising the statutory power of sale, the mortgagee must, in general, give to the mortgagor a three months' notice requiring him to repay the principal moneys (Conveyancing and Law of Property Act, 1881, s. 19), and, if the mortgage is one to which the Courts (Emergency Powers) Acts, 1914 to 1917, apply, the mortgagee cannot foreclose or realise his security without the leave of the Court.

As by s. 7 (*a*) of the Act (*infra*, p. 178) a mortgagee is restrained from calling in or enforcing his security (*inter alia*) only so long as interest at the rate *permitted* under the Act is paid, it is clear that the rate of interest may be increased up to the permitted rate. The proper method of effecting this appears to be that the mortgagee should give to the mortgagor a three months' notice of his intention to call in the principal money, and accompany such notice with an intimation that on the mortgagor's agreeing to pay the increased rate of interest permitted by the Act, the notice requiring repayment will be withdrawn (cf. *Fisher*: *Law of Mortgages* (6th ed.), p. 924). In those cases in which the Act provides that the increase in the rate of interest is to be by two instalments, one notice would be sufficient. If the mortgagor does not agree to pay the permitted increase in the rate of interest, it follows that he loses the protection of s. 7 (*a*) of the Act.

It will be observed that s. 3 (1) (*supra*) contains the words "but for this Act." It has been suggested, and it is submitted correctly, that as "but for this Act" the Acts of 1915 to 1919

would be in force, the Court would probably construe "this Act" as including the earlier Acts, so far as regards mortgages within the scope of those Acts (see 64 S.J., 695).

What is the position where a mortgage is affected both by the present Act and by the Courts (Emergency Powers) Acts, 1914 to 1917? Can it be said in such a case that, "but for this Act," the security could be enforced? As the Courts (Emergency Powers) Acts, 1914 to 1917, do not destroy rights but only affect remedies, it is submitted that in such a case the security is one which, "but for this Act," could be enforced, although before it could be enforced the leave of the Court must be obtained.

It would appear that, unless the mortgagor agrees to pay the increased rate of interest, he cannot be made personally liable therefor.

Apparently a mortgagor is not liable for any costs in respect of the notice of intention to increase the rate of interest, as by giving such a notice a mortgagee is not taking steps to protect the security.

(6) Restriction on Calling in of Mortgages.

It shall not be lawful for any mortgagee under a mortgage to which the Act applies to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured, so long as:—

(A) interest at the rate permitted under the Act is paid and is not more than 21 days in arrear; and

(B) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed; and

(C) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance (s. 7; see also *Dunfermline Building Company Limited* v. *Birrell*, (1919) 2 Sc.L.T. 14).

A mortgagor who wishes to avail himself of the protection of the Act must prove that he himself has paid interest and that he himself has kept the property in repair. He cannot rely, where the mortgagee is in possession, on the mortgagee's retention of rent as a payment of interest; nor can he rely on the fact

that the possession by the mortgagee prevents him from entering to do repairs (*Walters* v. *White* (1917), 36 T.L.R. 154).

When does a mortgagee take a step for enforcing his security? Where a summons asking for an order *nisi* for foreclosure had been issued before the Act of 1915 came into force, it was held that by attending on the hearing of the summons after the Act had come into force the mortgagee had taken a step for enforcing his right of foreclosure (*Welby* v. *Parker*, (1916) 2 Ch. 1). In an Irish case, *Martin* v. *Watson and Egan* ((1919) 2 I.R. 332), *A*, a mortgagor, assigned the equity of redemption in a leasehold house to *B*, who let the property to *C* under a lease which was void as against the mortgagee. It was held that by bringing an action against *A*, *B*, and *C*, the transferee had taken a step for enforcing his security within the meaning of s. 1 (4) of the Act of 1915 (replaced by s. 7 of the present Act).

The Act contains no provision for the protection of a purchaser against an irregular exercise by a mortgagee of his power of sale, but presumably in such a case a purchaser would be protected by the provisions of the Conveyancing and Law of Property Act, 1881, s. 21, as amended by the Conveyancing Act, 1911, s. 5 (1).

The above provisions do not apply :—

(1) To a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage (s. 7 (*i*)).

Many building society mortgages are, therefore, exempt from the provisions of the Act which prevent a mortgagee from enforcing his security.

(2) To any power of sale exercisable by a mortgagee who was on the 25th March, 1920, a mortgagee in possession (s. 7 (*i*)).

This clause does not mean that in every case where a mortgagee was in possession on the date named his remedies are now limited to the exercising of his power of sale, but is only inserted *ex abundanti cautela* (*Walters* v. *White* (1917), 116 L.T. 377 ; cf. Courts (Emergency Powers) Act, 1914, s. 1 (1) (*b*)).

The effect of s. 19 (3) of the Act and of s. 38 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), is to substitute for the 25th March, 1920, the 25th November, 1915, in the case of 1915 Act houses, and the 4th March, 1919, in the case of 1919 Act houses.

It has been held in an Irish case that the expression " mortgagee in possession " in s. 1 (1) (*b*) of the Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), means a mortgagee who has taken possession without the leave of the Court, and that a mortgagee who has gone into possession with the leave of the Court cannot sell without obtaining leave under that Act (*In re Provident Association of London, Limited and Gollogaly's Contract* (1917), 1 I.R. 240). Presumably the meaning is the same in the present Act.

(3) In cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage (s. 7 (*i*); cf. *Graham's Trustees* v. *Dow's Trustees*, (1917) 2 Sc. L.T. 154); and

(4) If, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the County Court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, and the Court by order authorises him to call in and enforce the same. But any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the Court directs pays to the mortgagee such portion of the principal sum secured as appears to the Court to correspond to the diminution of the security (s. 7 (*ii*)).

The Act apparently prevents a mortgagee from taking possession of the mortgaged premises; and as, in the absence of a special provision in the mortgage deed, a receiver cannot be appointed until the mortgagee has become entitled to exercise his statutory power of sale (Conveyancing and Law of Property Act, 1881, s. 24 (1)), it would appear that a receiver cannot be appointed except with the consent of the mortgagor (cf. Courts (Emergency Powers) (No. 2) Act, 1916, s. 1 (1)).

Even in a case in which the provisions of the present Act have no application, it may be necessary for a mortgagee, before taking steps to enforce his security, to obtain the leave of the Court under s. 1 (1) of the Courts (Emergency Powers) Act, 1914, as amended and extended by the Courts (Emergency Powers) (Amendment) Act, 1916, s. 1, the Courts (Emergency Powers) Act, 1917, s. 8, and the War Emergency Laws (Continuance) Act, 1920, s. 1, and first schedule.

CHAPTER VII.

Recovery of Sums Wrongly Paid.

Where any sum has, whether before or after the passing of the Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of the Act, or any of the previous Acts, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid. Any such sum, and any other sum which under the Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee (s. 14 (1)).

The Act of 1915, s. 1 (1), provided that, in the case of houses to which that Act applied, any increase of rent or mortgage interest above the standard rent or standard rate of interest (except such increases as the section specifically allowed) should be irrecoverable by the landlord or the mortgagee. It was, however, held that a tenant who had actually paid such an increase of rent was not entitled to recover the excess from the landlord (*Sharp Brothers and Knight* v. *Chant*, (1917) 1 K.B. 771; see also *Dickson* v. *Weir*, (1918) 2 Sc.L.T. 237). This anomaly was removed by the Courts (Emergency Powers) Act, 1917, s. 5 (1), whereby it was provided that where a landlord or mortgagee had been paid a sum which by virtue of the Act of

1915 would have been irrecoverable by the landlord or mortgagee, the sum so paid should within six months after the date of payment be recoverable from the landlord or mortgagee, or might be deducted from any rent or interest payable to such landlord or mortgagee within such six months.

There is now no time limited for a landlord or mortgagee to recover or deduct excess payments. The Act does not, however, render recoverable overpayments which were irrecoverable at the time of the passing of the Act, for s. 19 (3), after repealing the Act of 1915 and s. 5 of the Courts (Emergency Powers) Act, 1917 (*supra*), provides that "without prejudice to the operation of Section 38 of the Interpretation Act, 1889, nothing in this repeal shall render recoverable any sums which at the time of the passing of this Act were irrecoverable." Therefore, in *Rawlinson* v. *Alger* ((1921), 124 L.T. 512), where a tenant claimed to recover or set off the amount of rent overpaid by him from October, 1915 to May, 1920, it was held that the sums in question being admittedly irrecoverable at the time of the passing of the Act, s. 14 (1) (*supra*), when read with s. 19 (3) of the Act (*supra*), did not make them recoverable. The result is that a tenant or mortgagor can recover or set off: (1) all excess payments made within six months before the 2nd July, 1920 (the date of the passing of the Act), and (2) all excess payments made since that date.

CHAPTER VIII.

Contracting out of the Act.

(1) As between Landlord and Tenant.

A tenant cannot enter into a valid agreement to pay a higher rent than the amount permitted by the Act ; for *notwithstanding any agreement to the contrary*, if the amount of rent of any premises to which the Act applies exceeds the standard rent (as defined by s. 12 (1) (*a*) of the Act, *supra*, p. 19) by more than the amount permitted under the Act (as to which, see s. 2 (1), *supra*, pp. 23, *et seq.*), the amount of such excess is irrecoverable from the tenant (s. 1).

A landlord and a tenant cannot contract out of the Act in reference to giving up possession, for no agreement that they may make can give the Court the jurisdiction which by s. 5 of the Act the Court is forbidden to exercise (*Barton* v. *Fincham*, (1921) 2 K.B. 291).

Section 5 of the Act (*supra*, pp. 45, *et seq.*) states the circumstances in which an order or judgment for the recovery of possession of a dwelling-house may be made or given. " The Legislature in reference to claims for possession has secured its object by placing the fetter, not upon the landlord's action, but upon the action of the Court. The language used is so clear and precise that there is in my opinion no room for cutting down or restricting the operation of the section. The Legislature has definitely declared that the Court shall exercise its jurisdiction only in the instances specified in the section, and in no others " (*Barton* v. *Fincham* (*supra*), per Bankes, L.J., at p. 295).

In *Barton* v. *Fincham* (*supra*), the tenant of a small house agreed with the landlord in July, 1920, that for a consideration of £20 she would give up possession to the landlord at Michaelmas, 1920, and would give him notice that she would quit at that date. The notice was given and the £20 was paid,

but when Quarter Day arrived the tenant refused to give up possession. The landlord accordingly applied to the County Court Judge for possession, the grounds alleged being the tenant's notice to quit and her agreement to vacate the premises, and the Judge made an order for recovery of possession. On appeal to the Divisional Court, the Judges differed, Lush, J., holding that it was contrary to public policy to contract out of the Act, McCardie, J., holding that it was not. The judgment of the County Court Judge, therefore, stood. The Court of Appeal (Bankes, Scrutton, and Atkin, L.JJ.) held that the case was not one of those mentioned in s. 5 of the Act, and that the landlord was not entitled to an order for possession. The Court was not called upon to decide whether the landlord could in the circumstances sue the tenant for damages for failing to carry out her agreement or to recover back the £20. (See also *Smith* v. *Barclay*, (1920) 1 Sc.L.T. 13, per Lord Mackenzie, at p. 18.)

There would appear to be no objection to an agreement by a tenant waiving the privileges conferred on statutory tenants by s. 15 (1) of the Act (*supra*, p. 36).

(2) As between Mortgagor and Mortgagee.

A mortgagor cannot enter into a valid agreement to pay a higher rate of interest than the rate permitted by the Act, for *notwithstanding any agreement to the contrary*, if the amount of interest on a mortgage to which the Act applies exceeds the standard rate of interest (as defined by s. 12 (1) (*b*) of the Act, *supra*, p. 75) by more than the amount permitted under the Act (as to which see s. 4, *supra*, p. 75), the amount of such increase is irrecoverable from the mortgagor (s. 1).

An agreement between mortgagor and mortgagee that, notwithstanding the provisions of s. 7 of the Act, the mortgagee may exercise his powers of enforcing the mortgage is valid (see s. 7 (*i*), *supra*, p. 80).

CHAPTER IX.

The Expiration of the Act.

The Act expires, as to dwelling-houses on the 24th June, 1923 (s. 19 (2)), and as to premises used solely for business, trade, or professional purposes on the 24th June, 1921 (s. 13 (3)), on which respective dates the statutory tenancy created by the Act comes to an end.

Apart from the provisions of the Act, when a tenancy has been determined, whether by effluxion of time or otherwise, the landlord is entitled to possession of the premises. Section 15 (1) as read with s. 5 of the Act (*Remon* v. *City of London Real Property Company* (1920), 36 T.L.R. 869, per Scrutton, L.J., at p. 871) prevents the landlord from obtaining possession, except in certain circumstances specified in s. 5 (1) (*supra*, pp. 45-53). Where, in consequence of the original tenancy having been duly determined either by effluxion of time or by notice, the tenant is holding over under the Act as a statutory tenant, then, on the expiration of the Act, the statutory tenancy is at an end. It follows from the decisions in *Davies* v. *Bristow* and *Penrhos College, Limited* v. *Butler* ((1920) 3 K.B. 428, (*supra*, p. 40) that acceptance of rent by the landlord during the existence of the statutory tenancy will not by itself constitute the tenant a yearly tenant according to the general rule, nor entitle him to remain in possession after the statutory tenancy is at an end.

The expiration of the Act or any part thereof shall not render recoverable by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under the Act recoverable by him (s. 19 (2)).

CHAPTER X.

Procedure.

The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to the Act, and may, by those rules or directions, provide for any proceedings for the purposes of the Act being conducted so far as desirable in private and for the remission of any fees (s. 17 (1)).

In pursuance of the power thus conferred on him, the Lord Chancellor has made the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, dated July 9, 1920 (S.R.O. 1920, No. 1261, L. 37) (*infra*, p. 116).

A County Court has jurisdiction to deal with any claim or other proceedings arising out of the Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a County Court, and, if a person takes proceedings under the Act in the High Court which he could have taken in the County Court, he shall not be entitled to recover any costs (s. 17 (2)).

Claims for possession or ejectment cannot be said to arise out of the Act. It has been pointed out (*supra*, p. 44) that the Act being a restrictive one gives no power to the Court to order possession, unless the right thereto has accrued to the landlord independently of the Act. The above provision gives to the County Court jurisdiction to any amount in those classes of cases in which (apart from the amount involved) it would otherwise have jurisdiction.

There is an appeal from the County Court to the Divisional Court on a point of law in all cases except those in which the Act states that the decision of the County Court is final (see ss. 2 (6) and 12 (3), *supra*, pp. 30 and 22; see also *Lyon* v. *Morris*, (1887) 19 Q.B.D. 139).

Although various sections of the Act (*e.g.*, ss. 2 (1) (*a*), 2 (1) (*d*) (*ii*), 2 (2), 2 (6), 6, 7 (*ii*), 9, 12 (1) (*g*), 12 (3), 17 (2)) provide that the matters therein referred to shall be determined by the County Court, it is clear that the jurisdiction of justices to make orders for possession under the Small Tenements Recovery Act, 1838 (1 & 2 Vict., c. 74), s. 1, remains unaffected.

In an action in the County Court to recover possession of premises, costs follow the event under s. 113 of the County Courts Act, 1888, unless the Judge gives a special direction. This section is not affected by Rule 16 of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, which provides for the determination of the costs by the order of the County Court Judge (see *Bensusan* v. *Bustard* (1920), 89 L.J., K.B. 1117).

It is provided by s. 3 (2) of the Administration of Justice Act, 1920 (10 & 11 Geo. 5, c. 81) that, notwithstanding anything in any Act, it shall not be lawful for any party in a County Court or any other inferior court of civil jurisdiction to require any action or other matter arising under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, to be tried by a jury. This section comes into operation on the date on which the Juries Act, 1918 (8 & 9 Geo. 5, c. 23), expires, or, if His Majesty by Order in Council so directs, on such earlier date as may be specified in the Order (*ibid.*, s. 3 (3)).

CHAPTER XI.

Application of the Act to Scotland and Ireland.

(1) Application to Scotland.

The Act applies to Scotland, subject to the following modifications (s. 18 (1)) :—

(a) "Mortgage" and "encumbrance" mean a heritable security including a security constituted by absolute disposition qualified by back bond or letter ;

" Mortgagor " and " mortgagee " mean respectively the debtor and the creditor in a heritable security ;

" Covenant " means obligation ;

" Mortgaged property " means the heritable subject or subjects included in a heritable security ;

" Rateable value " means yearly value according to the valuation roll ;

(cf. *Anderson* v. *Assessor for Peebles* ((1921), 58 Sc.L.R. 242 ; *Naismith* v. *Assessor for Renfrew* (1921), 58 Sc.L.R. 344).

" Rateable value on the 3rd day of August, 1914," means yearly value according to the valuation roll for the year ending 15th day of May, 1915 ;

" Assessed " means entered in the valuation roll ;

" Land " means land and heritages ;

" Rates " means assessments as defined in the House Letting and Rating (Scotland) Act, 1911.

The House Letting and Rating (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 53), s. 1, provides that the expression " assessment " includes " all rates, charges, and assessments imposed, assessed,

or levied by an assessing authority, the proceeds of which are applicable to public local purposes and which are leviable in respect of the yearly value of lands and heritages, and includes any sum which, though obtained in the first instance by a precept, certificate or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of an assessment."

"Lord Chancellor" and "High Court" mean the Court of Session;

"Rules" means acts of sederunt;

"County Court" means the Sheriff Court;

"Sanitary Authority" means the local authority under the Public Health (Scotland) Act, 1897;

"Mesne Profits" means profits;

The Board of Agriculture for Scotland shall be substituted for the Minister of Agriculture and Fisheries;

The 28th day of May shall be substituted for the 24th day of June;

The reference to the County Agricultural Committee shall be construed as a reference to the body of persons constituted with respect to any area by the Board of Agriculture for Scotland under the Corn Production Act, 1917 (7 & 8 Geo. 5, c. 46), s. 11 (2);

References to levying distress shall be construed as references to doing diligence;

The reference to the President of the Surveyors' Institution shall be construed as a reference to the Chairman of the Scottish Committee of the Surveyors' Institution;

A reference to s. 5 of the Housing, Town Planning, &c. (Scotland), Act, 1919, shall be substituted for a reference to s. 7 of the Housing, Town Planning, &c., Act, 1919.

The Housing, Town Planning, &c. (Scotland), Act, 1919 (9 & 10 Geo. 5, c. 60), s. 5, provides for repayment by the Scottish Board of Health of losses incurred by local authorities on housing schemes (cf. *supra*, p. 12).

And a reference to s. 1 of the House Letting and Rating (Scotland) Act, 1911, shall be substituted for a reference to s. 3 of the Poor Rate Assessment and Collection Act, 1869.

Section 1 of the House Letting and Rating (Scotland) Act, 1911, provides that a small dwelling-house means a house in a burgh or special district in which the Act is in operation, entered in the valuation roll at a yearly rent or value of—

£10 or under if the population of the burgh or special district is less than 20,000 ;

£15 or under if the population of the burgh or special district is 20,000 and less than 50,000 ; and

£21 or under if the population of the burgh or special district is 50,000 or upwards ;

but does not include any dwelling-house occupied by the owner thereof or in which the owner resides, or any dwelling-house used as an inn or hotel, or any dwelling-house let along with land for agricultural, pastoral or horticultural purposes, or any dwelling-house let in conjunction with a shop, workshop, stable or byre ; nor any dwelling-house let under contract or lease current at the passing of the Act prior to the expiration of such contract or lease.

(B) Nothing in s. 2 (1) (*b*) of the Act (relating to permitted increases in rent (*supra*, p. 24)) shall permit any increase in rent in respect of any increase after the year ending Whit Sunday (23rd May), 1920, in the amount of the rates payable by the landlord other than rates for which he is responsible under the House Letting and Rating (Scotland) Act, 1911.

Section 7 of the above Act makes provision as to rating of small dwelling-houses as defined by that Act and for payment of assessments by the owner.

(C) Section 12 (1) (*d*) shall not apply.

Section 12 (1) (*d*) provides that "the expression 'rates' includes water rents and charges, and any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded." The non-application of this provision to Scotland is because the House Letting and Rating (Scotland) Act, 1920 (10 Geo. 5, c. 8), has already dealt with the matter.

(D) Where any dwelling-house, to which the Acts repealed by the present Act applied (as to which see *supra*, p. 2), is subject to a right of tenancy arising from a yearly contract or from tacit relocation, and ending

at Whit Sunday (15th May), 1921, the year ending at the said term of Whit Sunday shall be deemed to be a period during which, but for the Act, the landlord would be entitled to obtain possession of such dwelling-house.

(2) Application to Ireland.

The Act applies to Ireland, subject to the following modifications (s. 18 (2))—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor.

The Lord Chancellor of Ireland has made Rules under the Act which came into operation on 28th September, 1920.

(b) A reference to s. 15 of the Summary Jurisdiction (Ireland) Act, 1851, shall be substituted for the reference to s. 1 of the Small Tenements Recovery Act, 1838 (*supra*, p. 62).

The Summary Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict., c. 92), s. 15, provides for the recovery of possession of small tenements by warrant of justices.

(c) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891, and any notice of the apportionment of the principal money secured by a mortgage, if and when the notice becomes operative under the present Act, and the award of any arbitrator with reference to any such apportionment may be registered under the enactments relative to the registration of deeds or titles as the case requires;

(d) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that, where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may, on the application of the landlord or tenant, make such apportionment of the rateable value of the whole house as seems just,

and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of the present Act, but not further or otherwise.

In *Allen* v. *Inspector-General R.I.C.* ((1920), 54 I.L.T. 119), on the similar provision in the Act of 1915, s. 4 (2) (*c*), it was held that the valuation of a building used for public purposes is the figure set out in the rate book for the assessment of a private occupier of that building.

(E) The following paragraph shall be substituted for paragraph (ii) of sub-s. (1) of s. 5 of the Act (*supra*, p. 59)—

> (ii) Where the Court is satisfied that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding.

The phrase " agricultural holding " means the agricultural holding of the person who is seeking to recover possession of a house for the occupation of a person engaged in agricultural work (*Johnston* v. *Curran* (1921), 55 I.L.T. 4).

(F) The following sub-section shall be substituted for sub-s. (9) of s. 12 of the Act (*supra*, p. 10)—

> (9) This Act shall not apply to a dwelling-house erected after, or in course of erection on, the 2nd day of April, 1919, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but the rateable value of any such dwelling-house to which the Act would have applied if it had been erected or so reconstructed before the said date shall be ascertained as though the rent for the purposes of s. 11 of the Valuation (Ireland) Act, 1852, were the rent for which a similar dwelling-house might have been reasonably expected to be let on the 3rd day of August, 1914, the probable

average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the dwelling-house in its actual state, and all rates, taxes, and public charges, if any (except tithe rentcharge), being paid by the tenant.

Section 11 of the Valuation (Ireland) Act, 1852 (15 & 16 Vict., c. 63), provides that the valuation in regard to houses and buildings shall be made upon an estimate of the net annual value thereof, *i.e.*, the rent for which the premises might in their actual state be reasonably expected to let from year to year.

(G) The medical officer of health of a dispensary district shall be substituted for the sanitary authority in s. 2 of the Act (*supra*, p. 33) and in the First Schedule thereto (*infra*, p. 95), and the issue of certificates and the payment of fees in connection with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland.

(H) The Act shall not apply to any dwelling-house provided by a Local Authority under the Labourers (Ireland) Acts, 1883 to 1919, or under any of those Acts.

APPENDICES.

1.—Form of Notice by Landlord.

Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

Date

To

Address of premises to which this notice refers .. ..

Take Notice that I intend to increase the rent of *l.* *s.* *d.* per at present payable by you as tenant of the above-named premises by the amount of *l.* *s.* *d.* per

The increase is made up as follows :—

(*a*) *l.* *s.* *d.* under paragraph (*a*) of Sub-section (1) of Section Two of the Act, being six [eight] per cent. on *l.* *s.* *d.* expended by me since [*insert date*] on improvements and structural alterations, and consisting of*

(*b*) *l.* *s.* *d.* under paragraph (*b*) of Sub-section (1) of Section Two of the Act, on account of an increase in the rates payable by me from *l.* *s.* *d.* per to *l.* *s.* *d.* per . in respect of the premises.

(*c*) *l.* *s.* *d.* under paragraph (*c*) of Sub-section (1) of Section Two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

(*d*) *l.* *s.* *d.* under paragraph (*d*) of Sub-section (1) of Section Two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

The increase under head (*b*) will date from , being one clear week from the date of this notice, and the remaining increases from , being four clear weeks from the date of this notice.

† The increase under head (*d*) is on account of my responsibility for repairs, for no part [part only] of which are you under an express liability.

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* Here state improvements and alterations effected.

† Where the tenant is under an express liability for part of the repairs, the increase under head (*d*) is to be settled in default of agreement by the County Court.

*At any time or times, not being less than three months after the day of 19 , you are entitled to apply to the County Court for an order suspending the increases under heads (*c*) and (*d*) above if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the County Court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable on any application for a certificate, but, if the certificate is granted, you can deduct this sum from your rent. The address of the sanitary authority is

Signed

Address

2.—Examples of Increases of Rent.

It will be remembered that Section 2 of the Act permits the Standard Rent of a dwelling-house to be increased by four amounts: (1) For Improvements or Structural Alterations; (2) For Rates; (3) 15 per cent. of the net rent; and (4) 25 per cent. or less of the net rent according as the landlord is responsible for the whole or part only of the repairs (*supra*, pp. 23-29). In the following examples the principles laid down by the Act are applied to concrete cases, it being assumed in each instance that any existing agreement for tenancy has been terminated and that proper notice of intention to increase the rent has been given:—

1. On the 3rd August, 1914, a dwelling-house was let at 15s. per week, the landlord paying rates and being responsible for the whole of the repairs. The rates during the half-year from March to September, 1914, amounted to 3s. 9d. per week. The Standard Rent is, therefore, 15s. per week and the Net Rent 15s., less 3s. 9d. = 11s. 3d. per week. The rates now amount to 6s. 6d. per week, an increase of 2s. 9d. In 1918 the landlord expended £100 in structural alterations. The permitted increases are:—

	£	s.	d.
Under (1) Interest at 6 per cent. on £100 = per week	0	2	3
,, (2) Increase of Rates	0	2	9
,, (3) † 5 per cent. of Net Rent (11s. 3d.) ..	0	0	6½
,, (4) 25 per cent. ditto	0	2	9½
	£0	8	4
Add Standard Rent	0	15	0
Total Weekly Rent	£1	3	4

2. On the 3rd August, 1914, a dwelling-house was let on a quarterly tenancy at £52 per annum, the tenant paying rates, but the landlord being responsible for the whole of the repairs. The Net Rent is the same as Standard Rent, namely, £52. In June, 1919, the rent was increased by 10 per cent. to £57 4s. in accordance with the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, s. 4, and in October, 1920, the landlord expended £150 on structural alterations.

* This paragraph need not be included if there is no increase under head (*d*).

† 5 per cent. until 2nd July, 1920; 15 per cent. afterwards.

The permitted increases are :—

		£	s.	d
Under	(1) Interest at 8 per cent. on £150 = per annum	12	0	0
,,	(2) Nil		—	
,,	(3) * 5 per cent. of Net Rent (£52)	2	12	0
,,	(4) 25 per cent. of ditto	13	0	0
		£27	12	0
	Add Standard Rent	52	0	0
	Total Annual Rent	£79	12	0

3. On the 3rd August, 1914, a dwelling-house was let to a monthly tenant at £78 per annum, the tenant paying rates, but the landlord being responsible for repairs. The Net Rent is the same as the Standard Rent, namely, £78. There has been no expenditure on improvements or structural alterations.

The permitted increases are :—

		£	s.	d.
Under	(1) Nil		—	
	(2) Nil		—	
,,	(3) 15 per cent. of Net Rent (£78)	11	14	0
,,	(4) 25 per cent. ditto	19	10	0
		£31	4	0
	Add Standard Rent	78	0	0
	Total Annual Rent	£109	4	0

4. On the 3rd August, 1914, a dwelling-house was let at £100 per annum, the tenant paying rates, and being responsible for repairs. The Net Rent is the same as the Standard Rent, namely, £100. There has been no expenditure on improvements or structural alterations.

On the 24th June, 1920, the rent was increased to £150. This increase, so far as it exceeds the increases permitted by the Act is not recoverable from the tenant. The Standard Rent can, however, be increased as under :—

		£	s.	d.
Under	(1) Nil		—	
,,	(2) Nil		—	
,,	(3) 15 per cent. of Net Rent (£100) ..	15	0	0
,,	(4) Nil		—	
		£15	0	0
	Add Standard Rent	100	0	0
	Total Annual Rent	£115	0	0

* 5 per cent. until 2nd July, 1921 ; 15 per cent. afterwards.

3.—TABLE OF PERMITTED INCREASES OF MORTGAGE INTEREST.

	Metropolitan Police District.	Scotland.	Elsewhere.	Standard Rate of Interest.	Permitted Increases above standard Rate of Interest.		Total Permitted Interest.
					From July 2, 1920, to July 2, 1921.	From July 2, 1921. to June 24, 1923.	
1915 Act Houses.	Standard rent or rateable value not exceeding £35.	Standard rent or rateable value not exceeding £30.	Standard rent or rateable value not exceeding £26.	4 % 4½% 5 % 5½% 6 % 6½%	½%	1% ½% nil	5 % 5½% 6 % 6½% 6½% 6½%
1919 Act Houses.	Both standard rent and rateable value exceeding £35 and neither exceeding £70.	Both standard rent and rateable value exceeding £30 and neither exceeding £60.	Both standard rent and rateable value exceeding £26 and neither exceeding £52.	4 % 4½% 5 % 5½% 6 % 6½%	½%* nil	1% ½% nil	5 % 5½% 6 % 6½% 6½% 6½%
1920 Act Houses.	Standard rent or rateable value not exceeding £105.	Standard rent or rateable value not exceeding £90.	Standard rent or rateable value not exceeding £78.	4 % 4½% 5 % 5½% 6 % 6½%	1% ½% nil	1% ½% nil	5 % 5½% 6 % 6½% 6½% 6½%

*NOTE.—The increase of ½ % permitted by the 1919 Act (No. 1), s. 4 (i), in the case of 1919 Act houses is included in the increase permitted by the present Act, so that if this increase has already been made, no further increase is possible until the 2nd July, 1921.

4.—Places in the Metropolitan Police District.

According to the Metropolitan Police Guide (6th ed., 1916, p. 39), the Metropolitan Police District comprises the following places :—

1. The County of London, exclusive of the City of London and its Liberties.

2. The County of Middlesex.

3. In the County of Surrey the following parishes and places :—

Addington,
Banstead,
Barnes,
Beddington,
Carshalton,
Cheam,
Chessington,
Coombe,
Coulsdon,
Cuddington,
Epsom,
Ewell (exclusive of Kingswood Liberty),
Farley,
Ham, Hamlet of, with Hatch,
Hook, Hamlet of,
Kew,
Kingston-on-Thames,
Long Ditton,
Maldon (Old and New),
Merton,
Mitcham,
Morden,
Mortlake,
Molesey (East and West),
North Sheen,
Petersham,
Richmond,
Sanderstead,
Surbiton,
Sutton,
Thames Ditton (comprising the Hamlets of Claygate, Ember and Weston),
Tolworth,
Wallington,
Warlingham,
Wimbledon,
Woodmansterne.

4. The County Borough of Croydon.

5. In the County of Herts the following parishes and places :—

Aldenham (and Hamlet of Theobald Street),
Arkley,
East Barnet,
Barnet Vale,
Bushey (Urban and Rural),
Cheshunt,
Chipping Barnet,
Elstree,
Hadley,
Monken Hadley,
Northaw,
Ridge,
Shenley,
South Mimms (Urban).
Totteridge.

6. In the County of Essex the following parishes and places :—

Barking,
Buckhurst Hill,
Cann Hall,
Chigwell,
Chingford,
Dagenham,
East Ham, Borough of (including Little Ilford),
Great Ilford,
Loughton,
Low Leyton,
Waltham Abbey and Town (including the Hamlets of Holyfield, Sewardston, and Upshire),
Walthamstow,
Wanstead,
Woodford.

7. The County Borough of West Ham.

8. In the County of Kent the following parishes and places :—

Beckenham,	Foot's Cray,
Bexley,	Hayes Keston,
Bromley,	Mottingham, Hamlet of,
Chislehurst,	North Cray,
Crayford,	Orpington,
Down,	Penge, Hamlet of,
Erith,	St. Mary's Cray,
Farnborough,	St. Paul's Cray,

Wickham (East and West).

5.—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

(10 & 11 Geo. 5, c. 17.)

An Act to consolidate and amend the Law with respect to the increase of rent and recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of securities on such premises, and for purposes in connection therewith.

[2nd July, 1920.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Restrictions on Increase of Rent and Mortgage Interest.

Restriction on Increasing Rent and Mortgage Interest.

1.—Subject to the provisions of this Act, where the rent of any dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the twenty-fifth day of March nineteen hundred and twenty, or is hereafter, increased, then, if the increased rent or the increased rate of interest exceeds by more than the amount permitted under this Act the standard rent or standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be :

Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-house or the rate of interest on any such mortgage since the said date, but before the passing of this Act, he may cancel such increase and repay any amount paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.

Permitted Increases in Rent.

2.—(1) The amount by which the increased rent of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say :—

(*a*) Where the landlord has since the fourth day of August nineteen hundred and fourteen incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding six, or, in the case of such expenditure incurred after the passing of this Act, eight per cent. of the amount so expended :

Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly :

(*b*) An amount not exceeding any increase in the amount for the time being payable by the landlord in respect of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the third day of August nineteen hundred and fourteen, or in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which included the date on which the rates first became payable thereafter :

(*c*) In addition to any such amounts as aforesaid, an amount not exceeding fifteen per centum of the net rent :

Provided that, except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the amount of such addition shall not, during a period of one year after the passing of this Act, exceed five per cent. :

(*d*) In further addition to any such amounts as aforesaid—

(i) where the landlord is responsible for the whole of the repairs, an amount not exceeding twenty-five per cent. of the net rent ; or

(ii) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the county court to be fair and reasonable having regard to such liability :

(*e*) In the case of dwelling-houses let by a railway company to persons in the employment of the company, such additional amount, if any, as is required in order to give effect to the agreement dated the first day of March nineteen hundred and twenty, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement, whether made before or after the passing of this Act, extending or modifying that agreement.

(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (*d*) of the foregoing subsection, the tenant or the sanitary authority may apply to the county court for an order suspending such increase, and also any increase under paragraph (*c*) of that subsection, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair.

The court on being satisfied by the production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied.

(3) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act: Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

(4) On any application to a sanitary authority for a certificate or report under this section a fee of one shilling shall be payable, but, if the authority as the result of such application issues such a certificate as aforesaid, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

(5) For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

(6) Any question arising under subsection (1), (2) or (3) of this section shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

Limitation as to Permitted Increases in Rent.

3.—(1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession, or any increase in the rate of interest on a mortgage except in respect of a period during which, but for this Act, the security could be enforced.

(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house to which this Act applies is increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four clear weeks, or, where such increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act, or in a form substantially to the same effect. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

(3) A notice served before the passing of this Act of an intention to make any increase of rent which is permissible only by virtue of this Act shall not be deemed to be a valid notice for the purpose of this section.

Permitted Increase in Rate of Mortgage Interest.

4.—The amount by which the increased rate of interest payable in respect of a mortgage to which this Act applies may exceed the standard rate, shall be an amount not exceeding one per cent. per annum :

Provided that—

(*a*) the rate shall not be increased so as to exceed six and a half per cent. per annum ; and

(*b*) except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the increase during a period of one year after the passing of this Act shall not exceed one-half per cent. per annum.

FURTHER RESTRICTIONS AND OBLIGATIONS ON LANDLORDS AND MORTGAGEES.

Restriction on Right to Possession.

5.—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

(*a*) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed ; or

(*b*) the tenant or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person ; or

(*c*) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession ; or

(*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any person bona fide residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available ; or

(*e*) the landlord is a local authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of the authority or undertaking, and the court is satisfied as aforesaid as respects alternative accommodation ; or

(*f*) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances ; or

(*g*) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war ;

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (*d*) of this subsection—

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment ; or

(ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding ; or

(iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war ; or

(iv) where the landlord became the landlord before the thirtieth day of September nineteen hundred and seventeen, or, in the case of a dwelling-house to which section four of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, applied, became the landlord before the fifth day of March, nineteen hundred and nineteen, or in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, became the landlord before the twentieth day of May nineteen hundred and twenty, and in the opinion of the court greater hardship would be caused by refusing an order for possession than by granting it.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment

was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, or in section one of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant.

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

Restriction on Levy of Distress for Rent.

6.—No distress for the rent of any dwelling-house to which this Act applies shall be levied except with the leave of the county court, and the court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by the last preceding section of this Act in relation to applications for the recovery of possession :

Provided that this section shall not apply to distress levied under section one hundred and sixty of the County Courts Act, 1888.

The provisions of this section shall be in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914, or any Act amending or extending the same, except so far as those provisions are repealed by this Act.

Restriction on Calling in of Mortgages.

7.—It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as—

(*a*) interest at the rate permitted under this Act is paid and is not more than twenty-one days in arrear ; and

(*b*) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed ; and

(*c*) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance

to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured :

Provided that—

(i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was on the twenty-fifth day of March nineteen hundred and twenty a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage ; and

(ii) if, in the case of a mortgage of a leasehold interest the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this section shall not apply to such mortgage ; but any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the court directs pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security.

Restriction on Premiums.

8.—(1) A person shall not, as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the twenty-fifth day of March nineteen hundred and twenty, the amount or value thereof shall be recoverable by the person by whom it was made or given :

Provided that, where any agreement has been made since the said date but before the passing of this Act for the tenancy of a house to which this Act applies, but the enactments repealed by this Act did not apply, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy.

Limitation on Rent of Houses Let Furnished.

9.—(1) Where any person lets, or has, before the passing of this Act, let any dwelling-house to which this Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged is yielding or will yield to the lessor a profit more than twenty-five per cent. in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per cent. shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee.

(2) For the purpose of this section, "normal profit" means the profit which might reasonably have been expected from a similar letting in the year ending on the third day of August nineteen hundred and fourteen.

Penalty for Excessive Charges for Furnished Lettings.

10.—Where any person after the passing of this Act lets any dwelling-house to which this Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the lessor a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under the last preceding section of this Act, is extortionate, then, without prejudice to any other remedy under this Act, the lessor shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent so far as it exceeds the amount permitted by the last preceding section of this Act shall be irrecoverable and that the amount of any such excess shall be repaid to the lessee, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

Statement to be supplied as to Standard Rent.

11.—A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds.

APPLICATION AND INTERPRETATION OF ACT.

Application and Interpretation.

12.—(1) For the purposes of this Act, except where the context otherwise requires :—

(*a*) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let :

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or

lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent;

(*b*) The expression "standard rate of interest" means, in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest;

(*c*) The expression "net rent" means, where the landlord at the time by reference to which the standard rent is calculated paid the rates chargeable on, or which but for the provisions of any Act would be chargeable on the occupier, the standard rent less the amount of such rates, and in any other case the standard rent;

(*d*) The expression "rates" includes water rents and charges, and any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded;

(*e*) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a dwelling-house or a part of dwelling-house first assessed after that date, the rateable value at which it was first assessed;

(*f*) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor;

(*g*) The expression "landlord" also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions "tenant and tenancy" include sub-tenant and sub-tenancy, and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court;

(*h*) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897;

(*i*) The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed—

(*a*) in the metropolitan police district, including therein the City of London, one hundred and five pounds;

(*b*) in Scotland, ninety pounds; and

(*c*) elsewhere, seventy-eight pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies:

Provided that—

(i) this Act shall not, save as otherwise expressly provided, apply to a dwelling-house bonâ fide let at a rent which includes payments in respect of board, attendance, or use of furniture; and

(ii) the application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes ; and

(iii) for the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one-quarter of the rateable value of the house, be treated as part of the house, but, subject to this provision, this Act shall not apply to a house let together with land other than the site of the house.

(3) Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein, except that it shall not apply—

(*a*) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage ; or

(*b*) to an equitable charge by deposit of title deeds or otherwise ; or

(*c*) to any mortgage which is created after the passing of this Act.

(5) When a mortgage comprises one or more dwelling-houses to which this Act applies and other land, and the rateable value of such dwelling-houses is more than one-tenth of the rateable value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and at the expiration of the said calendar month's notice this Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned :

Provided that the mortgagor shall, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution.

(6) Where this Act has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies.

(7) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

(8) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling shall, for the purposes of this Act, be treated as a part of a dwelling-house let as a separate dwelling.

(9) This Act shall not apply to a dwelling-house erected after or in course of erection on the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but, for the purpose of any enactment relating to rating, the gross estimated rental or gross value of any such house to which this Act would have applied if it had been erected or so reconstructed before the third day of August nineteen hundred and fourteen, and let at that date, shall not exceed :—

(*a*) if the house forms part of a housing scheme to which section seven of the Housing, Town Planning, &c., Act, 1919, applies, the rent (exclusive of rates) charged by the local authority in respect of that house ; and

(*b*) in any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid.

(10) Where possession has been taken of any dwelling-houses by a Government department during the war, under the Defence of the Realm regulations, for the purpose of housing workmen, this Act shall apply to such houses as if the workmen in occupation thereof at the passing of this Act were in occupation as tenants of the landlords of such houses.

Application to Business Premises.

13.—(1) This Act shall apply to any premises used for business trade or professional purposes or for the public service as it applies to a dwelling-house, and as though references to " dwelling-house " " house " and " dwelling " included references to any such premises, but this Act in its application to such premises shall have effect subject to the following modifications :—

(*a*) The following paragraph shall be substituted for paragraph (*c*) of subsection (1) of section two :

(*c*) In addition to any such amounts as aforesaid, an amount not exceeding thirty-five per centum of the net rent :

(*b*) The following paragraph shall be substituted for paragraph (*d*) of subsection (1) of section five :

(*d*) the premises are reasonably required by the landlord for business trade or professional purposes or for the public service, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available :

(*c*) The following paragraph shall be added after paragraph (*g*) of the same subsection :

(*h*) The premises are bonâ fide required for the purpose of a scheme of reconstruction or improvement which appears to the court to be desirable in the public interest :

(*d*) Paragraph (i) of the same subsection shall not apply :

(*e*) Sections nine and ten shall not apply.

(2) The application of this Act to such premises as aforesaid shall not extend to a letting or tenancy in any market or fair where the rent or conditions of tenancy are controlled or regulated by or in pursuance of any statute or charter.

(3) This section shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-one.

General.

Recovery of Sums made Irrecoverable, etc.

14.—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee.

(2) If—

(*a*) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of any such Act is irrecoverable ; or

(*b*) where any such entry has, before the passing of this Act, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord shall, on summary conviction, be liable to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

Conditions of Statutory Tenancy.

15.—(1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice :

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

(2) Any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any

sum, or the giving of any other consideration, by any person other than the landlord, and any person acting in contravention of this provision shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

Minor Amendments of Law.

16.—(1) Section three of the Poor Rate Assessment and Collection Act, 1869, shall, except so far as it relates to the metropolis, have effect as though for the limits of value specified in that section there were substituted limits twenty-five per cent. in excess of the limits so specified, and that section and section four of the same Act shall have effect accordingly.

(2) It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

(3) Where the landlord of any dwelling-house to which this Act applies has served a notice to quit on a tenant, the acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits.

Rules as to Procedure.

17.—(1) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

(2) A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this provision be within the jurisdiction of a county court, and, if a person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs.

Application to Scotland and Ireland.

18.—(1) This Act shall apply to Scotland, subject to the following modifications:—

(*a*) "Mortgage" and "encumbrance" mean a heritable security including a security constituted by absolute disposition qualified

by back bond or letter ; " mortgagor " and " mortgagee " mean respectively the debtor and the creditor in a heritable security ; " covenant " means obligation ; " mortgaged property " means the heritable subject or subjects included in a heritable security ; " rateable value " means yearly value according to the valuation roll ; " rateable value on the third day of August nineteen hundred and fourteen " means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen ; " assessed " means entered in the valuation roll ; " land " means lands and heritages ; " rates " means assessments as defined in the House Letting and Rating (Scotland) Act, 1911 ; " Lord Chancellor " and " High Court " mean the Court of Session ; " rules " means act of sederunt ; " county court " means the sheriff court ; " sanitary authority " means the local authority under the Public Health (Scotland) Act, 1897 ; " mesne profits " means profits ; the Board of Agriculture for Scotland shall be substituted for the Minister of Agriculture and Fisheries ; the twenty-eighth day of May shall be substituted for the twenty-fourth day of June ; the reference to the county agricultural committee shall be construed as a reference to the body of persons constituted with respect to any area by the Board of Agriculture for Scotland under subsection (2) of section eleven of the Corn Production Act, 1917, references to levying distress shall be construed as references to doing diligence ; the reference to the President of the Surveyors' Institution shall be construed as a reference to the Chairman of the Scottish Committee of the Surveyors' Institution ; a reference to section five of the Housing, Town Planning, &c. (Scotland) Act, 1919, shall be substituted for a reference to section seven of the Housing, Town Planning, &c., Act, 1919 ; and a reference to section one of the House Letting and Rating (Scotland) Act, 1911, shall be substituted for a reference to section three of the Poor Rate Assessment and Collection Act, 1869 ;

(*b*) Nothing in paragraph (*b*) of sub-section (1) of the section of this Act relating to permitted increases in rent shall permit any increase in rent in respect of any increase after the year ending Whitsunday nineteen hundred and twenty in the amount of the rates payable by the landlord other than rates for which he is responsible under the House Letting and Rating (Scotland) Act, 1911 :

(*c*) Paragraph (*d*) of subsection (1) of the section of this Act relating to application and interpretation shall not apply :

(*d*) Where any dwelling-house, to which the Acts repealed by this Act applied, is subject to a right of tenancy arising from a yearly contract or from tacit relocation, and ending at Whitsunday nineteen hundred and twenty-one, the year ending at the said term of Whitsunday shall be deemed to be a period during which, but for this Act, the landlord would be entitled to obtain possession of such dwelling-house.

(2) This Act shall apply to Ireland subject to the following modifications :—

(*a*) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor :

(*b*) A reference to section fifteen of the Summary Jurisdiction (Ireland) Act, 1851, shall be substituted for the reference to section one of the Small Tenements Recovery Act, 1838 :

(*c*) The expression " mortgage " includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891, and any notice of the apportionment of the principal money secured by a mortgage, if and when the notice becomes operative under this Act, and the award of any arbitrator with reference to any such apportionment may be registered under the enactments relative to the registration of deeds or titles as the case requires :

(*d*) The expression " rateable value " means the annual rateable value under the Irish Valuation Acts : Provided that, where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor, may on the application of the landlord or tenant, make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise :

(*e*) The following paragraph shall be substituted for paragraph (ii) of subsection (1) of section five of this Act :

(ii) Where the court is satisfied that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding : or

(*f*) The following subsection shall be substituted for subsection (9) of section twelve of this Act :

(9) This Act shall not apply to a dwelling-house erected after, or in course of erection on, the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements ; but the rateable value of any such dwelling-house to which this Act would have applied if it had been erected or so reconstructed before the said date shall be ascertained as though the rent for the purposes of section eleven of the Valuation (Ireland) Act, 1852, were the rent for which a similar dwelling-house might have been reasonably expected to let on the third day of August nineteen hundred and fourteen, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the dwelling-house in its actual state, and all rates, taxes, and public charges, if any (except tithe rentcharge), being paid by the tenant :

(*g*) The medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act and in the First Schedule thereto, and the issue of certificates and the payment of fees in connection with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland :

(*h*) This Act shall not apply to any dwelling-house provided by a local authority under the Labourers (Ireland) Acts, 1883 to 1919, or under any of those Acts.

Short Title, Duration, and Repeal.

19.—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(2) Except as otherwise provided, this Act shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-three :

Provided that the expiration of this Act or any part thereof shall not render recoverable by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule :

Provided that, without prejudice to the operation of section thirty-eight of the Interpretation Act, 1889, nothing in this repeal shall render recoverable any sums which at the time of the passing of this Act were irrecoverable, or affect the validity of any order of a court, or any rules or directions made or given under any enactment repealed by this Act, all of which orders, rules, and directions if in force at the date of the passing of this Act shall have effect as if they were made or given under this Act, and any proceedings pending in any court at the date of the passing of this Act under any enactment repealed by this Act, shall be deemed to have been commenced under this Act.

SCHEDULES.

FIRST SCHEDULE.

FORM OF NOTICE BY LANDLORD.

Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

Date

To

Address of premises to which this notice refers - - }

TAKE NOTICE that I intend to increase the rent of *l.* *s.* *d.* per at present payable by you as tenant of the above-named premises by the amount of *l.* *s.* *d.* per

The increase is made up as follows :—

(*a*) *l.* *s.* *d.* under paragraph (*a*) of subsection (1) of section two of the Act, being six [eight] per cent. on *l.* *s.* *d.* expended by me since [*insert date*] on improvements and structural alterations, and consisting of*

(*b*) *l.* *s.* *d.* under paragraph (*b*) of subsection (1) of section two of the Act, on account of an increase in the rates payable by me from *l.* *s.* *d.* per to *l.* *s.* *d.* per in respect of the premises.

(*c*) *l.* *s.* *d.* under paragraph (*c*) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

(*d*) *l.* *s.* *d.* under paragraph (*d*) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

* Here state improvements and alterations effected.

The increase under head (*b*) will date from , being one clear week from the date of this notice, and the remaining increases from , being four clear weeks from the date of this notice.

* The increase under head (*d*) is on account of my responsibility for repairs, for no part [part only] of which are you under an express liability.

† At any times or times, not being less than three months after the day of 19 , you are entitled to apply to the county court for an order suspending the increases under heads (*c*) and (*d*) above if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable on any application for a certificate, but, if the certificate is granted, you can deduct this sum from your rent. The address of the sanitary authority is

Signed
Address

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5, c. 97	The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915	The whole Act.
7 & 8 Geo. 5, c. 25	The Courts (Emergency Powers) Act, 1917	Ss. 4, 5 and 7.
8 & 9 Geo. 5, c. 7	The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919	The whole Act.
9 & 10 Geo. 5, c. 90	The Increase of Rent, &c. (Amendment) Act, 1919	The whole Act.

* Where the tenant is under an express liability for part of the repairs the increase under head (*d*) is to be settled in default of agreement by the county court.

† This paragraph need not be included if there is no increase under head (*d*).

6.—The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920.

STATUTORY RULES AND ORDERS,

1920, No. $\frac{1261}{\text{L. } 37.}$

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS), ENGLAND.

County Court Procedure.

The Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, dated July 9, 1920, made by the Lord Chancellor under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17).

Preliminary.

The following Rules under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (in these Rules referred to as the Act), shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

Rule 3 of these Rules, as to applications under the Courts (Emergency Powers) Act, 1914, shall apply also to the High Court; and the rules made under that Act shall have effect subject to that Rule.

These Rules may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, and shall come into operation on the 15th day of July, 1920.

On the coming into operation of these Rules the following Rules, viz.:—

The Increase of Rent and Mortgage Interest (War Restriction) Rules, 1916, dated the 29th January, 1916, and the like Rules, 1919, dated the 21st May, 1919, shall be annulled without prejudice to anything done thereunder, and these Rules shall apply to all proceedings pending under the Rules hereby annulled on the day when these Rules come into operation.

Applications under Section 2 ; *Section* 9 ; *Section* 12, *subsection* (1 *g*) *or* (3) ; *Section* 6 ; *or Section* 5, *subsection* (6).

1.—An application to the county court under the Act—

(*a*) to determine any question or make any order or declaration relating to increase of rent under section 2, or section 9 ; or

(*b*) to apportion the rent or rateable value of the property under subsection (3) of section 12 ; or

(*c*) for leave to distrain under section 6 ; or

(*d*) by a member of the tenant's family under section 12, subsection (1 *g*) ; or

(*e*) for compensation under section 5, subsection (6) ;

may be made in the case of (*e*) to the court in which the order or judgment complained of was obtained, and in all other cases to the court in the district of which the premises are situate.

2.—(1) An application to the county court under the Act for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest to which the Act applies, pursuant to the second proviso to section 7, may be made—

(*a*) to the court in the district of which the mortgaged property is situate ; or

(*b*) to the court in the district of which the mortgagor resides or carries on business ; or

(*c*) if the mortgagee resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and the mortgagor resides or carries on business in the district of any other court mentioned in the said section, either to the court in the district of which the mortgagee resides or carries on business, or to the court in the district of which the mortgagor resides or carries on business.

3.—(1) Subject to the provisions of this Rule, the Courts (Emergency Powers) Rules and the County Courts (Emergency Powers) Rules as to applications to the High Court or to the county court for leave to foreclose or realize any security to which the Courts (Emergency Powers) Act, 1914, applies, shall cease to apply to mortgages of leasehold interests to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies : and this Rule shall apply in lieu thereof.

(2) An application under the last preceding Rule for an order authorizing a mortgagee to call in and enforce a mortgage of a leasehold interest shall if and so far as an application for leave to foreclose or realize the security is required under the Courts (Emergency Powers) Act, 1914, be deemed to be also an application for leave to foreclose or realize the security under that Act, and no separate application under that Act shall be necessary.

(3) If during the progress of the proceedings on any such application it shall be made to appear to the court that the mortgage is one to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, does not apply, but that leave to realize or enforce the security is required under the Courts (Emergency Powers) Act, 1914, and that the amount of the principal sum secured by the mortgage does not exceed five hundred pounds, the application may proceed in the county court as an application for leave to foreclose or realize the security under the last mentioned Act and the County Courts (Emergency Powers) Rules, and those Rules shall apply accordingly ; but if the amount of the principal sum secured by the mortgage exceeds five hundred pounds the application shall not proceed under the last mentioned Act, unless the respondent consents to the county court having jurisdiction in the matter, in which case the court shall have jurisdiction to deal with the application as an application for leave to foreclose or realize the security under the last mentioned Act and Rules, and those Rules shall apply accordingly.

(4) If it shall be made to appear to the court that the mortgage is one to which neither of the above mentioned Acts applies, the application shall be struck out.

4.—An application under these Rules (other than the applications referred to in rules 19 and 20) shall be made by means of a summons according to such one of the forms in the Appendix as shall be applicable to the case, entitled "In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920."

Preparation, Filing, &c., of Summonses.

5.—The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served: Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office: and the registrar shall examine, complete, seal, and sign the summons and copies, and return the copies to the applicant for service.

Service and Substituted Service.

6.—(1) The summons shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons, unless the judge or registrar gives leave for shorter service. On an application by the Sanitary Authority under section 2, subsection (2), notice in writing of the summons shall be given to the tenant by the Sanitary Authority.

(2) Service shall be effected in accordance with the provisions of Order LIV, Rules 2 and 3, of the County Court Rules as to service of notice of an interlocutory application.

(3) The practice of the courts as to substituted service of summonses and notices shall apply to summonses under these Rules.

Applications to Registrar.

7.—Any application under these Rules may be made to the registrar, subject to the following provisions:—

(*a*) The registrar may in any case, and shall on the application of either party, made on the hearing of the application, and before the registrar has given his decision, refer the matter to the judge:

(*b*) The judge may vary or rescind any determination or order made by the registrar, and may make such determination or order as may be just:

(*c*) An application for such variation or rescission shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications; and the notice shall be filed within four clear days from the date of the determination or order of the registrar, and if it is not so filed no such application shall be allowed to be made without leave of the judge.

Evidence in Support of Application.

8.—No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party.

Power to hear Cases in Private.

9.—The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

Transfer of Proceedings.

10.—If during the progress of the proceedings on any application it shall be made to appear to the judge that the same could be more conveniently heard in some other court, it shall be competent to the judge to transfer the same to such other court; and in any such case the provisions of section 85 of the County Courts Act, 1888, and section 10 of the County Courts Act, 1919, and of Order VIII, Rule 9, of the County Court Rules shall apply.

Decisions of Court.

11.—On the hearing of the application, or at any adjournment thereof, the court, on proof of the service of the summons, if the respondent does not appear, shall—

(*a*) in the case of an application under section 2 or section 9 or section 5, subsection (6), determine the question raised or make or refuse the order or declaration asked for; or

(*b*) in the case of an application under subsection (3) of section 12 apportion the rent or rateable value; or

(*c*) in the case of an application under section 6 give or refuse leave; or

(*d*) in the case of an application under section 7 make or refuse an order authorising the mortgagee to call in or enforce the mortgage; or

(*e*) in the case of any application make such other determination, order or declaration in the matter as the court shall think fit.

Power to impose Conditions.

12.—On an application for an order authorising a mortgagee to call in and enforce a mortgage, the court may, after considering all the circumstances of the case and the position of all the parties, make or refuse to make the order subject to such conditions as the court may think fit.

Certificates, Orders or Declarations on Applications.

13.—When the court has given its decision on any application, a certificate of the determination of the court, or an order or declaration in accordance with the decision of the court, shall be prepared and sealed and signed by the registrar, and duplicates thereof shall be delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the parties; but it shall not be necessary for the party in whose favour a certificate or order or declaration is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

General Provisions as to Procedure on Applications.

14.—Subject to the provisions of the Act and these Rules, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application under the Act.

15.—(1) The following fees shall be payable under Schedule B, Part I, of the Treasury Order regulating Fees in the County Courts,

on applications under the Act and these Rules, in lieu of all other fees on such proceedings, viz. :—

	s.	d.
On an application for an order or declaration or the determination of a question relating to the increase of rent of premises or for leave to distrain—		
6*d.* in the £ or part of a £, calculated on 4 weeks' standard rent (or on an application under section 9 the actual rent) of the premises, or in the case of leave to distrain on the rent to be distrained for, but not exceeding	2	6
On an application for the apportionment of rent or rateable value or for compensation under section 5, subsection 6	10	0
On an application for an order authorising a mortgagee to call in and enforce a mortgage	20	0

The foregoing fees shall include drawing, sealing, and issuing the certificate or order, and the fee prescribed by paragraph 12 of Part I of Schedule B of the Fees Order shall not be taken.

(2) On summonses to witness, the fees prescribed by Schedule A of the Fees Order shall be taken.

(3) On applications for discovery or inspection of documents, and on applications for rescission or variation of orders or judgments under section 5, subsection 3, the fees prescribed by paragraphs 10 and 12 of Part I of Schedule B of the Fees Order shall be taken.

(4) The court may remit or excuse in whole or in part any fee paid or payable under this Rule.

Costs.

16.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court.

(2) The court may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in an action for an amount equal to—

(*a*) in the case of an application for an order or declaration or determination of a question relating to the increase of rent, or for leave to distrain, the amount on which fees are payable under Rule 15 ; or

(*b*) in the case of an application to apportion rent or rateable value, one-half of the annual rent or rateable value apportioned to the premises ; or

(*c*) in the case of an application for an order authorising a mortgagee to call in and enforce the mortgage, the amount of the principal sum secured : Provided that Column B of the Scale shall apply in all cases above twenty pounds, to the exclusion of Column C.

(3) Where the amount does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—

	s.	d.
If the amount exceeds £2 but does not exceed £5 ..	6	8
If the amount exceeds £5 but does not exceed £10 ..	10	0

(4) In the case of an application for compensation under section 5, subsection 6, the Court may either fix the amount of such costs or allow them on the sale applicable in an action.

(5) In the case of any other application the Court shall fix the amount of such costs.

(6) The court may direct that any costs allowed shall be payable by the opposite party, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, that they

shall be included in the security; and any order directing payment of costs shall be included in the certificate or order, and shall be enforceable in the same manner as an order for payment of costs made in an action.

Forms.

17.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses, applications, certificates and orders under the Act and these Rules.

(2) The registrar of any court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

Proceedings for the Recovery of Rent or Mortgage Interest, or for the Recovery of Possession of Tenements or Ejectment of Tenants.

18.—Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any premises to which the Act applies, or for the ejectment of a tenant from any such premises, the court shall, before making an order for the recovery of such rent or interest, or for recovery of possession or ejectment, satisfy itself that such order may properly be made, regard being had to the provisions of the Act.

Death of Tenant Intestate.

19.—Where, on the death of a tenant intestate, a member of his family requires the decision of the Court under the latter part of section 12, subsection 1 (*g*), of the Act, the judge shall give such directions as to the procedure to be followed, and the notices to be given to and the attendance of all such persons as may be interested as he shall think fit, and he (or the registrar, if so directed by him) shall consider what may be urged (either orally or in writing) by or on behalf of such persons, and thereupon give his decision: provided that the registrar's decision may be varied by the judge pursuant to Rule 7. Rule 13, relating to certificates of decisions, shall apply to a decision under this subsection if so directed by the judge.

Applications for Stay, Rescission or Variation of Orders or Judgments.

20.—An application to the court for stay, suspension, discharge, rescission or variation of orders or judgments under section 5, subsection (2) or (3), may be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

The 9th day of July, 1920. *Birkenhead*, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 15 of the foregoing Rules shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings therein set forth.

James Parker,
J. Towyn Jones.

I concur in the above order as to fees.

Birkenhead, C.

The 9th day of July, 1920.

1.

Summons for Determination of Question or Declaration or Order relating to Increase of Rent under Section 2, subsection (1) or (3).

In the County Court of , holden at

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , for the determination, pursuant to the above-mentioned Act, of a question [or for a declaration or order] relating to the increase of rent of certain premises [*or* of part, that is to say (*here specify the part*) , of certain premises], to which the said Act applies, situate at , and known as , , of which the applicant is the tenant and you the respondent are the landlord [*or* of which you the respondent are the tenant and the applicant is the landlord], the question being
[in respect of the transfer to the tenant of certain burdens and liabilities previously borne by the landlord [*or* in respect of the transfer to the landlord of certain burdens and liabilities previously borne by the tenant],
[*or* (*here state the question to be determined or the declaration or order asked for*)]

and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination or declaration or order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

2.

Summons for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To

of

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for an order that notwithstanding the provisions of the above-mentioned Act, the said may be at liberty to call in and enforce a certain mortgage to which the said Act applies, dated the day of granted by you the respondent to the applicant [*or* to and assigned by him to the applicant] on certain leasehold property situate at , and known as

on the ground that the security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced,

and for an order providing for the costs of the application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

3.

Certificate on Application for Determination of Question or Declaration or Order relating to Increase of Rent, under Section 2, subsection (1) or (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Imterest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
and upon hearing

This Court doth pursuant to the above-mentioned Act determine and declare [or order] as follows—

[(*a*) that as the result of the transfer to the applicant, *A.B.*,
[*or* the respondent, *C.D.*,] the tenant of certain premises [*or* of part, that is to say (*here specify the part*)
of certain premises] to which the said Act applies, situate at , and known as

of the following burdens and liabilities formerly borne by the respondent, *C.D.*,
[*or* by the applicant, *A.B.*,] the landlord, that is to say (*here specify the burdens and liabilities transferred*)

the terms on which the said premises are held are on the whole less favourable to the tenant than the previous terms, and that the rent of the said premises has thereby been increased for the purposes of the said Act by the sum of a week
[*or* are on the whole not less favourable to the tenant than the previous terms, and that the rent of the said premises has not been increased for the purposes of the said Act] :

[*or* (*b*) that as the result of the transfer to the applicant, *A.B.*,
[*or* the respondent, *C.D.*,]
the landlord of certain premises [*or* of part, that is to say (*here specify the part*)
of certain premises] to which the said Act applies, situate at , and known as

of the following burdens and liabilities previously borne by the respondent, *C.D.*,
[*or* the applicant, *A.B.*,],
the tenant, that is to say (*here specify the burdens and liabilities transferred*)

and the increase of rent in respect of such transfer, the terms on which the said premises are held are on the whole more favourable to the tenant than the previous terms, and that the increase of rent in respect of such transfer is to be deemed not to be an increase of rent for the purposes of the said Act [*or* are on the whole less favourable to the tenant than the previous terms, and that the increased rent in respect of such transfer is to be deemed to be an increase of rent for the purposes of the said Act to the extent of a week]]

[*or as the case may be*].

[*or* (*here state the decision of the Court on the question or matter the subject of the application*).]

[*Add, if so ordered,*

And it is ordered that the respondent, *C.D.*,

[or the applicant, *A.B.*,]

do, on or before the day of , 19 , to pay to the applicant, *A.B.*,

[or to the respondent, *C.D.*,]

his costs of this application, which are hereby allowed at the sum of £].

Dated day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

4.

Order on Application for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No of application .

Between

A.B.
(*address and description*)

Applicant,

and

C.D.
(*address and description*)

Respondent.

On the application of

and upon hearing

This court being satisfied that the security of the applicant on certain leasehold property situate at

and known as

under a certain mortgage to which the above-mentioned Act applies, dated the day of , granted by the respondent to the applicant [*or* to

and assigned by him to the applicant], is seriously diminishing in value, or is otherwise in jeopardy, and that it is reasonable that the said mortgage should be called in and enforced, doth pursuant to the above-

mentioned Act order that notwithstanding the provisions of the said Act the applicant, *A.B.*, be at liberty and he is hereby authorised to call in and enforce the said mortgage.

[*If any conditions imposed, add* subject to the following conditions, that is to say :—

].

[*Or*, It is ordered that the application of the applicant, *A.B.*, for an order authorising him to call in and enforce a certain mortgage to which the above-mentioned Act applies, on certain leasehold property situate at
and known as

dated the day of , 19 , granted by the respondent *C.D.*, to the applicant, *A.B.* [*or* to , and assigned by him to the applicant, *A.B.*,] be and the same is hereby dismissed.

[*Add, if so ordered,*

And it is ordered that the applicant, *A.B.*, be allowed as against the respondent, *C.D.*, his costs of his application, which are hereby allowed at the sum of £ .

And it is ordered that the said sum of £ be added to the security created by the said mortgage [*or* that the respondent, *C.D.*, do pay the said sum of £ to the applicant, *A.B.*, on or before the day of , 19].

[*Or*, And it is ordered that the applicant, *A.B.*, do, on or before the day of , 19 , pay to the respondent, *C.D.*, his costs of this application which are hereby allowed at the sum of £ .]

Dated this day of , 19 .

By the Court,

Registrar.

To
(*the applicant and respondent, naming them*).

5.

Summons for Apportionment of Rent or Rateable Value of Property under Section 12, *subsection* (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of , at the hour of in

the noon, on the hearing of an application on the part of , of , for the apportionment of the rent on the 3rd day of August, 1914 [*or* (*if the property was last let before or first let after the 3rd August*, 1914, *insert the date at which it was so let*; see *Act*, *Section* 12, *subsection* 1 (*a*)
[*or* the rateable value on the 3rd day of August, 1914 [*or* (*if the property was first assessed after that date, insert the date at which it was first assessed*)]

of certain property situate at
and known as

and comprising certain premises [*or* part, that is to say (*here specify the part*)
of certain premises] situate at
and known as

for the purpose of determining the standard rent [*or* the rateable value] of the said premises [*or* of the above-mentioned part of the said premises] for the purposes of the above-mentioned Act,

and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above-mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

6

Certificate on Application for Apportionment of Rent or Rateable Value.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
and upon hearing

This Court, for the purpose of determining the standard rent [*or* rateable value] of certain premises [*or* of part, that is to say (*here specify the part*)
of certain premises] to which the above-mentioned Act applies, situate at , and known as

and comprised in a certain property known as

doth pursuant to the above-mentioned Act declare that the rent at which the said property was let on the 3rd day of August, 1914 [*or if the property was last let before that date or first let after that date, on the* day of , 19 (*the date on which it was so let*)], shall be apportioned between the said premises [*or* the said part of the said premises] and the rest of the said property as follows, viz. :—

£ to the said premises [*or* the said part of the said premises] ;
and
£ to the remainder of the said property.

[*or* doth pursuant to the above-mentioned Act declare that the rateable value of the said property on the 3rd day of August, 1914 [*or if the property was first assessed after that date* on the day of , 19 (*the date on which it was first assessed*)], shall be apportioned between the said premises [*or* the said part of the premises] and the rest of the said property as follows, viz. :—

£ to the said premises [*or* the said part of the said premises]
and
£ to the remainder of the said property.

[*Add, if so ordered,*

And it is ordered that the respondent, *C.D.*,
[*or* the applicant, *A.B.*,] do, on or before the day of , 19 , pay to the applicant; *A.B.*, [*or* to the respondent, *C.D.*, , his costs of this application, which are hereby allowed at the sum of .]

Dated this day of , 19 .

By the Court,
Registrar.

To
(*the applicant and respondent, naming them*).

7.

Summons for Order of Suspension and Declaration relating to Increase of Rent under Section 2, subsection (2).

In the County Court of holden at .
In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.
No of Application
Between
A.B.
(*address and description*) Applicant,
and
C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 2, subsection (2), of the said Act on the part of of for a declaration that certain premises [*or* of part, that is to say (*here specify the part*)

of certain premises] to which the said Act applies, situate at
and known as of which the applicant
[or where the applicant is the Sanitary Authority state the name of the tenant] is the tenant, and you, the respondent, are the landlord, are not in all respects reasonably fit for human habitation [*or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or breach of express agreement, if any, and for an order suspending the increase of rent pursuant to Section 2 subsection (2) of the said Act until further order, or for such other declaration, and order in that behalf, as the Court may think fit

and an order providing for the costs of this application.

AND FURTHER TAKE NOTICE that if you do not attend in person or by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To
(*the respondent,*
naming him).

8.

Order on Application for Order of Suspension and Declaration relating to Increase of Rent, under Section 2, *sub-section* (2).

In the County Court of holden at .
In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.
No. of Application

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
and upon hearing

The Court being satisfied that certain premises [*or* of part, that is to say (*here specify the part*)
of certain premises] to which the said Act applies, situate at
, and known as
of which the applicant [or where the Sanitary Authority is the applicant state the name of the tenant] is the tenant, and the respondent is the landlord, are not in all respects reasonably fit for human habitation [*or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or breach of express agreement doth declare accordingly and doth order, pursuant to Section 2, subsection (2), of the said Act that the increase of rent of be suspended until respondent, upon notice of application in that behalf, shall have satisfied the Court that the necessary repairs (other than the repairs, if any, for which the tenant

is liable) have been executed [*or* (such other declaration or order as the Court thinks fit)].

[*Or* it is ordered that the application of the said be, and the same is hereby dismissed.]

[*Add order as to costs, if any : see* Form 6.]

Dated this day of , 19 .

By the Court,
Registrar.

To
the applicant
and respondent
(*naming them*).

9.

Notice of the Application under Section 5, *subsection* (2) *or* (3), *for Stay Suspension, Discharge, Rescission, or Variation of Order, or Judgment.*

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .
No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that the applicant, *A.B.*, [*or* the respondent, *C.D.*,] intends to apply to the Judge of this Court on , the day of 19 , at the hour of in the noon, to stay, [suspend, discharge, rescind *or* vary] the order [*or* judgment] made [*or* given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that (*here recite order or judgment*).

and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that the grounds of my intended application are that

(*here set out circumstances*)

Dated this day of , 19 .

(Signed)
Applicant [*or* Respondent],
[*or* Applicant's [*or* Respondent's] Solicitor].

To (*the respondent or applicant, naming him*),
and to Messrs.
his solicitors,
and to the Registrar of the Court

10.

Order on Application under Section 5, sub-section (2) or (3), for Stay, Suspension, Discharge, Rescission, or Variation of Order or Judgment.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
for the stay, suspension [discharge, rescission *or* variation] of the order made [*or* judgment given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that

(*here recite order or judgment*)

and upon hearing

It is ordered that the said order [*or* judgment] be and the same is hereby stayed, suspended [*or* discharged *or* rescinded *or* varied] as follows:—

(*here set out terms of order*)

[*Or*, It is ordered that the application of the said be and the same is hereby dismissed.]

[*Add order as to costs, if any*: see Form 7.]

Dated this day of , 19 .

By the Court,
Registrar.

To
(*the applicant and the respondent, naming them*).

11.

Summons on Application for Determination of Question or Declaration and Order under Section 9.

In the County Court of holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of 19 , at the hour

of in the noon, on the hearing of an application on the part of
of
the particulars of which are hereunto annexed.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned, such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

PARTICULARS.

[*To be appended or annexed to summons and, if on separate paper, with heading as in summons.*]

1. On or about the day of , 19 , the Respondent let certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at and known as to the applicant at a rent of a week [*or* month, *or as the case may be*] , which rent includes payment in respect of furniture.

2. The Applicant alleges that the rent charged for the premises so let to him is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914.

3. The Applicant therefore applies to the Court under Section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920—

(*a*) for a declaration that it is proved to the satisfaction of the Court that the rent charged on the letting of the said premises by the Respondent to the Applicant is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, and for an assessment by the Court of the amount of such last-mentioned profit ; and

(*b*) for an order that the said rent, so far as it exceeds such sum as would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable ; and

(*c*) for an order that the amount of any payment of rent in excess of such sum made by the Applicant in respect of any period after the passing of the said Act shall be repaid to the Applicant, and may, without prejudice to any other mode of recovery, be recovered by the Applicant by means of deductions from any subsequent payment of rent ; and

(*d*) for an order providing for the costs of this application.

Dated this day of ,19 .

Applicant
[*or* Applicant's Solicitor].

12.

Order on Application under Section 9.

In the County Court of holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for an order under Section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing

The Court doth declare that it is proved to its satisfaction that the rent charged on the letting by the Respondent to the Applicant of certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at and known as at a rent of a week [*or* a month, *or as the case may be*], which rent includes payment in respect of the use of furniture, is yielding, or will yield, to the Respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, which last-mentioned profit is hereby assessed by the Court at the sum of a week [*or* a month, *or as the case may be*].

And it is ordered that the said rent to the extent of a week [*or as the case may be*] being the amount by which the said rent exceeds the sum of per week [*or as the case may be*] , which would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable.

And it is further ordered that the sum of , being the amount of the payments of rent in excess of the said sum of per week (*or as the case may be*) made by the Applicant in respect of the period of the said letting after the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, shall be repaid to the Applicant, and may, without prejudice to any other method of recovery, be recovered by the Applicant by means of deductions from any subsequent payments of rent.

[*Add, if so ordered*—

And it is ordered that the Respondent do pay the said sum of to the Applicant on the day of [*or* by instalments of for every days, the first payment to be made on the day of].]

[*Add also, if so ordered*—

And it is ordered that the Respondent do on or before the day of pay to the Applicant his costs of this application, which are hereby allowed at the sum of .]

[*Or, if application fails*—

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing

It is ordered that the said application be and the same is hereby dismissed.
[*Add directions, if any, as to costs*
].]

Dated this day of , 19 .

By the Court,
Registrar.

To
the applicant
and respondent
(*naming them*).

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13 and 14.

For summons and order for leave to distrain adapt forms 5 *and* 6 *under the Consolidated County Courts* (*Emergency Powers*) *Rules*, 1918.

15.

Summons for Declaration and Order relating to payment of Compensation under Section 5, *subsection* (6).

In the County Court of , holden at
In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.
No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 5, subsection (6,) of the said Act, on the part of of , for a declaration that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court
(*here give title of action*)
for possession of [*or* ejectment from] certain premises [*or* of part, that is to say,
(*here specify the part*)
of certain premises]
to which the said Act applies, situate at , and known as , of which the Applicant was the tenant, and you the Respondent were the landlord, was obtained by misrepresentation [*or* the concealment of material facts]
and that the Applicant is entitled to recover from you compensation for damage or loss sustained by him as the result of the said order [*or* judgment], and for an order ordering you to pay the sum of £ ,
[*or* such sum as shall appear to the Court sufficient] as compensation for

such damage or loss, or for such other declaration and order in that behalf as the Court may think fit, and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To *the Respondent* (*naming him*).

16.

Order on Application for Declaration and Order relating to Payment of Compensation under Section 5, subsection (6).

In the County Court of , holden at

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of
and upon hearing

The Court doth declare and adjudge that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court (here give title of action) , for possession of [*or* ejectment from] certain premises [*or* of part, that is to say (here specify the part) of certain premises] to which the said Act applies, situate at and known as , of which the applicant was the tenant, and the Respondent was the landlord, was obtained by misrepresentation [*or* the concealment of material facts], and that the Applicant is entitled under Section 5, subsection (6), of the said Act to recover against the Respondent the sum of £ as compensation for damage or loss sustained by the Applicant as the result of the said order [*or* judgment] and it is ordered that the Respondent do pay the said sum of £ to the Registrar of this Court on the day of ,
[*or* it is ordered that the application of the said be, and the same is hereby dismissed]

[*Add order as to costs, if any* : *see* Form 6].

Dated this day of , 19 .

By the Court,
Registrar

To
the applicant and respondent (*naming them*).

7. INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915.

(5 & 6 Geo. 5, c. 97.)

[23rd December 1915.]

1. *Restriction on raising rent or rate of mortgage interest.*—(1) Where the rent of a dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the commencement of the present war, or is hereafter during the continuance of this Act, increased above the standard rent or the standard rate of interest as hereinafter defined, the amount by which the rent or interest payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable :

Provided that—

(i) This sub-section shall not apply to any rent or mortgage interest which accrued due before the twenty-fifth day of November nineteen hundred and fifteen ; and

(ii) Where the landlord has since the commencement of the present war incurred, or during the continuance of this Act incurs, expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs), an increase of rent at a rate not exceeding six per cent. per annum on the amount so expended shall not be deemed to be an increase for the purposes of this Act ; and

(iii) Any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which a dwelling-house is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso the question shall be determined by the county court, whose decision shall be final and conclusive ; and

(iv) Where the landlord pays the rates chargeable on, or which but for the enactments relating to compounding would be chargeable on, the occupier of any dwelling-house, an increase of the rent of the dwelling-house shall not be deemed to be an increase for the purposes of this Act if the amount of the increase does not exceed any increase in the amount for the time being payable by the landlord in respect of such rates over the corresponding amount paid in respect of the yearly, half yearly or other period which included the third day of August nineteen hundred and fourteen, and for the purposes of this proviso the expression " rates " includes water rents and charges ; and

(v) Where the rate of mortgage interest has been increased in compliance with, or in consequence of, a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to the fourth day of August nineteen hundred and fourteen, such increase shall not be deemed to be an increase for the purposes of this Act; and

(vi) Wherever an increase of rent is by this Act permitted, no such increase shall be due or recoverable until the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, accompanied—

(*a*) where the increase of rent is on account of such expenditure as is mentioned in proviso (ii) to this subsection, by a statement of the improvements or alterations effected and of their cost; and

(*b*) where the increase of rent is on account of an increase in rates, by a statement showing particulars of the increased amount charged in respect of rates on the dwelling-house; and

(*c*) where such a notice has been served on any tenant the increase may be continued without service of any fresh notice on any subsequent tenant.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this Act applies require the payment of any fine, premium, or other like sum in addition to the rent, and where any such payment has been made in respect of any such dwelling-house after the twenty-fifth day of November nineteen hundred and fifteen, then the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord, but this provision shall not apply to any payment under an agreement entered into before the fourth day of August nineteen hundred and fourteen.

(3) No order for the recovery of possession of a dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the court making such order, and where such order has been made but not executed before the passing of this Act the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) It shall not be lawful for any mortgagee under a mortgage to which this Act applies, during the continuance of this Act, and so long as interest at the standard rate is paid and is not more than twenty-one days in arrear, and the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed, and so long as the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of

principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured :

Provided that this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exercisable by a mortgagee who was at the twenty-fifth day of November nineteen hundred and fifteen a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage :

Provided also that if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this subsection shall not apply to such mortgage.

2. *Interpretation and application.*—(1) For the purposes of this Act except where the context otherwise requires :—

(*a*) The expression " standard rent " means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let :

(*b*) The expression " standard rate of interest " means in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest :

(*c*) The expression " rateable value " means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed :

(*d*) The expressions " landlord," " tenant," " mortgagee," and " mortgagor " include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor :

(*e*) The expression " mortgage " includes a land charge under the Land Transfer Acts, 1875 and 1897.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where either the annual amount of the standard rent or the rateable value of the house or part of the house does not exceed—

(*a*) in the case of a house situate in the metropolitan police district, including therein the city of London, thirty-five pounds ;

(*b*) in the case of a house situate in Scotland, thirty pounds ; and

(*c*) in the case of a house situate elsewhere, twenty-six pounds ;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies : Provided that this Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(3) Where, for the purpose of determining the standard rent or rateable value of a dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed or the rateable value of the property in which that dwelling-house is comprised, a county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein except that it shall not apply—

(*a*) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage, or

(*b*) to an equitable charge by deposit of title deeds or otherwise.

(5) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be a dwelling-house to which this Act applies.

(6) Where the standard rent payable in respect of any tenancy of a dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house.

3. *Rules as to procedure.*—The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may by those rules or directions provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

4. *Application to Scotland and Ireland.*—(1) This Act shall apply to Scotland, subject to the following modifications :—

" Mortgage and incumbrance " mean a heritable security ; " fine " means grassum or consideration other than rent ; " mortgagor " and " mortgagee " mean respectively the debtor and the creditor in a heritable security ; " covenant " means obligation ; " mortgaged property " means the heritable subject or subjects included in a heritable security ; " rateable value " means yearly value according to the valuation roll ; " rateable value on the third day of August nineteen hundred and fourteen " means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen ; " assessed " means entered in the valuation roll ; " committed waste " means " wilfully destroyed the property " ; " land " means lands and heritages ; " enactments relating to compounding " include the House-letting and Rating (Scotland) Act, 1911 ; " rate " means assessment as defined in the last-mentioned Act ; " Lord Chancellor " means the Court of Session ; " rules " means act of sederunt ; and " county court " means the sheriff.

(2) This Act shall apply to Ireland subject to the following modifications :—

(*a*) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor ;

(*b*) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891;

(*c*) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may on the application of the landlord or tenant make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise.

5. *Short title and duration.*—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(2) This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer, but the expiration of this Act shall not render recoverable any rent or interest which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

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8. THE COURTS (EMERGENCY POWERS) ACT, 1917.

(7 & 8 Geo. 5, c. 25.)

[10th July, 1917.]

4. *Power to accept premiums on leases for* 21 *years or upwards.*—(1) Subsection (2) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall not apply to a lease of a dwelling-house for a term of twenty-one years or upwards.

(2) Section two of the Courts (Emergency Powers) (No. 2) Act, 1916 (6 & 7 Geo. 5, c. 18), is hereby repealed.

5. *Provisions as to sums made irrecoverable by* 5 *&* 6 *Geo.* 5, *c.* 97.—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which by virtue of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, would have been irrecoverable by the landlord or mortgagee, the sum so paid shall at any time within six months after the date of payment, or, in the case of a payment made before the passing of this Act, within six months after the passing thereof, be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by such tenant or mortgagor from any rent or interest payable within such six months by him to such landlord or mortgagee.

(2) If any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of the said Act is irrecoverable, or if, where any such entry has before the passing of this Act been made made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to delete the entry, he shall on summary conviction be liable to a fine not exceeding ten pounds.

(3) This section shall be construed as one with the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

7. *Provisions as to leases at less than rack rent.*—In subsection (6) of section two of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which relates to tenancies at less than rack rent, the word "standard" shall be omitted, and at the end of the subsection there shall be inserted the following words, "and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or had ever existed."

9.—INCREASE OF RENT, &c. (AMENDMENT) ACT, 1918.

(8 GEO. 5, c. 7.)

[2nd May, 1918.]

1. *Restriction of meaning of landlord in* 5 *&* 6 *Geo.* 5, *c.* 97, *s.* 1 (3).—Subsection (3) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall have effect as if at the end thereof the following provision was inserted:—

> "For the purposes of this subsection the expression 'landlord' shall not include any person who since the thirtieth day of September nineteen hundred and seventeen has become landlord by the acquisition of the dwelling-house or any interest therein otherwise than by the devolution thereof to him under a settlement made before the said date, or under a testamentary disposition or an intestacy,"

and the provisions of the said subsection with respect to orders made but not executed before the passing of that Act, shall apply to orders made but not executed before the passing of this Act, as if this Act had been substituted for that Act in the said subsection:

Provided that this enactment shall not apply in any case where the court is satisfied by certificate given by or on behalf of the Board of Agriculture and Fisheries (or as regards premises in Scotland by the Board of Agriculture for Scotland, or in Ireland the Department of Agriculture and Technical Instruction for Ireland) that the premises in question are required for the occupation of a person engaged or employed in agricultural work of urgent national importance.

2. *Short Title.*—This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1918.

10.—INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1919.

(9 GEO. 5, c. 7.)

[2nd April, 1919.]

1. *Prolongation of duration of principal Act,* 5 *&* 6 *Geo.* 5, *c.* 97.—The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter referred to as the "principal Act"), and the enactments amending that Act, shall continue in force until Lady Day nineteen hundred and twenty-one, but during the period (hereinafter referred to as "the extended period") between the time when but for this Act the principal Act would have expired and the said Lady Day the principal Act shall have effect subject to the modifications contained in the two next succeeding sections.

2. *Limited power of increasing rents during the extended period.*—(1) An increase in the rent of a dwelling-house to which the principal Act applies payable in respect of the extended period or any part thereof which would but for the principal Act be recoverable, shall be recoverable if or so far as the amount of the increase does not exceed ten per centum of the standard rent :

Provided that no such increase shall be due or recoverable if the sanitary authority of the district in which the house is situate on the application of the tenant certifies that the house is not reasonably fit for human habitation or is not kept in a reasonable state of repair, nor in any case until or in respect of any period prior to the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, and informing the tenant of his right to apply to the sanitary authority for such a certificate as aforesaid.

(2) On any such application to a sanitary authority a fee of one shilling shall be payable, but if the authority, as a result of the application, issues such a certificate as aforesaid the tenant shall be entitled to deduct the amount of the fee from any subsequent payment of rent.

(3) The increase of rent permitted by this section shall be in addition to any increase permitted by section one of the principal Act.

3. *Limited power of increasing rate of mortgage interest.*—Nothing in the principal Act shall prevent an increase in the rate of interest payable in respect of the extended period on a mortgage to which the principal Act applies, if the increase does not exceed one-half per centum per annum, and the rate when so increased does not exceed five per centum per annum, and subsection (4) of section one of the principal Act shall apply as if the reference therein to the standard rate included a reference to such increased rate.

4. *Extension of principal Act to higher-rented houses.*—As from the passing of this Act, the principal Act and the enactments amending that Act shall extend to houses or parts of houses let as separate dwellings where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where—

(*a*) in the case of a house situated in the metropolitan police district, including the City of London, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty-five pounds, and neither exceeds seventy pounds ;

(*b*) in the case of a house situated in Scotland, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty pounds, and neither exceeds sixty pounds ;

(*c*) in the case of a house situated elsewhere, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed twenty-six pounds, and neither exceeds fifty-two pounds ;

and shall also extend to mortgages (not being mortgages to which the principal Act as originally enacted applies), where the mortgaged property consists of or comprises one or more of such dwelling-houses as aforesaid or any interest therein, subject, however, to the exceptions mentioned in subsection (4) of section two of the principal Act, but in the application to those houses and mortgages the principal Act and the

enactments amending that Act shall have effect, subject to the following modifications :—

(i) for subsection (1) of section one of the principal Act, exclusive of the provisos to that subsection, the following provisions shall be substituted :—

Where the rent of a dwelling-house to which this Act applies or the rate of interest on a mortgage to which this Act applies has been since the twenty-fifth day of December nineteen hundred and eighteen, or is hereafter increased and such increase would apart from this Act have been recoverable, then, if the increased rent exceeds by more than ten per centum the standard rent, or the increased rate of interest exceeds by more than one-half per centum per annum the standard rate, the amount of such excess above the said ten per centum or one-half per centum, as the case may be, shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be, and, if paid, may be recovered by the tenant or mortgagor in the manner and subject to the provisions of subsection (1) of section five of the Courts (Emergency Powers) Act, 1917 ;

(ii) in proviso (i) to subsection (1) and subsections (2) and (4) of section one of the principal Act the fourth day of March nineteen hundred and nineteen shall be substituted for the twenty-fifth day of November nineteen hundred and fifteen ;

(iii) in subsection (3) of section one of the principal Act references to the date of the passing of the principal Act shall be construed as references to the date of passing of this Act ;

(iv) in subsection (4) of section one of the principal Act for the reference to the standard rate there shall be substituted a reference to the rate permitted by this section ;

(v) at the end of paragraph (*a*) of subsection (1) of section two of the principal Act there shall be inserted the following proviso :—

Provided that, if the rateable value of the dwelling-house on the said third day of August exceeds the standard rent as so defined, that rateable value shall, as respects that house, be deemed to be the standard rent.

5. *Minor amendments of the principal Act.*—(1) A landlord of a house to which the principal Act, either as originally enacted or as extended by this Act, applies shall, on being so requested by the tenant of the house, furnish to him a statement as to what is the standard rent of the house, and if he fails within fourteen days to do so, or furnishes a statement which is false in any material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten pounds.

(2) Where a person who has, since the thirtieth day of September nineteen hundred and seventeen, purchased a house to which the principal Act, either as originally enacted or as extended by this Act, applies, requires the house for his own occupation or that of some person in his employ, or in the employ of some tenant from him, nothing in the Increase of Rent, &c. (Amendment) Act, 1918, shall be construed as

preventing the court from making an order for the recovery of possession of the house, if, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, the court considers it reasonable to make such an order.

(3) The principal Act, both as originally enacted and as extended by this Act, shall have effect as if in proviso (vi) to subsection (1) of section one of that Act after the word " until " there were inserted the words " or in respect of any period prior to."

(4) Any rooms in a dwelling-house the subject of a separate letting as a dwelling shall, for the purposes of the principal Act and this Act, be treated as a part of a house let as a separate dwelling.

6. *Limitation on rent of houses let furnished.*—(1) Where the occupier of a dwelling-house to which the principal Act, either as originally enacted or as extended by this Act, applies, lets, or has, before the passing of this Act, let the house or any part thereof at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged yields to the occupier a profit more than twenty-five per centum in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per centum, shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee, and, without prejudice to any other method of recovery, may be recovered by him by means of deductions from any subsequent payments of rent.

(2) For the purpose of this section " normal profit " means the profit which might reasonably have been obtained from a similar letting in the year ending on the third day of August, nineteen hundred and fourteen.

7. *Amendment of definition of standard rent.*—At the end of paragraph (*a*) of subsection (1) of section two of the principal Act, the following words shall be inserted :—

> Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent.

8. *Exception of new houses.*—Neither the principal Act nor this Act shall apply to houses erected after or in course of erection at the passing of this Act.

9. *Application of Act to Scotland.*—In the application of this Act to Scotland—

(*a*) the twenty-eighth day of May shall be substituted for Lady Day and the local authority under the Public Health (Scotland) Act, 1897, shall be substituted for the sanitary authority ;

(*b*) as from the commencement of the extended period the principal Act shall be amended by the insertion in proviso (iv) of subsection (1) of section one, after the word " dwelling-house " where first occurring therein, of the words " or where by the law of Scotland owners' rates are chargeable on the landlord of any dwelling-house."

10. *Application of Act to Ireland.*—In the application of this Act to Ireland—

(*a*) the first day of May shall be substituted for Lady Day in the case of tenancies where the former day is the gale day;

(*b*) the medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act, and the issue of certificates and the payment of fees in connexion with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland.

11. *Short title and construction.*—This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, and shall be construed as one with the principal Act.

11.—INCREASE OF RENT, &c. (AMENDMENT) ACT, 1919

(9 & 10 Geo. 5, c. 90.)

[23rd December, 1919.]

1. *Orders for possession.*—(1) After the passing of this Act no order or judgment for the recovery of possession of a dwelling-house to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter called the principal Act), or any of the Acts amending the same applies, or for the ejectment of a tenant therefrom, shall be made or given, so long as the tenant continues to pay rent at the agreed rate as modified by the principal Act or any of the Acts amending the same and performs the other conditions of the tenancy, unless—

(*a*) the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, and the court considers it reasonable to make such an order or give such judgment; or

(*b*) the tenant, by sub-letting the dwelling-house or any part thereof or by taking in lodgers, is making a profit which, having regard to the rent paid by the tenant, is unreasonable, and the court considers it reasonable to make such an order or give such judgment; or

(*c*) the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, and the court, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, considers it reasonable to make such an order or give such judgment.

(2) At the time of making any order or giving any judgment for the recovery of possession of any such dwelling-house or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may, if the order or judgment was made or given on the ground that the premises were reasonably required as aforesaid, stay or suspend execution thereof, or postpone the date of possession for such period

or periods as it shall think fit, either unconditionally or subject to such conditions in regard to payment by the tenant of rent or mesne profits and otherwise as the court shall think fit, and, if such conditions are complied with, the court may, if it shall think fit, discharge or rescind such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and in the opinion of the court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, every warrant for delivery of possession of a dwelling-house to which the principal Act or any Act amending the same applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, and for such further period or periods, if any, as the court shall from time to time whether before or after the expiration of such three months, direct.

(5) This Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(6) In the application of this section to Scotland a reference to profits shall be substituted for the reference to mesne profits.

2. *Short title, construction and repeal.*—(1) This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1919, and shall remain in force until the first day of July nineteen hundred and twenty and shall be construed as one with the principal Act.

(2) The enactments set out in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

SCHEDULE.

SECTION 2.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5, c. 97	Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915	S. 1 (3).
8 Geo. 5, c. 7	Increase of Rent, &c. (Amendment) Act, 1918	The whole Act.
9 Geo. 5, c. 7	Increase of Rent and Mortgage Interest (Restrictions) Act, 1919	S. 5 (2).

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SUPPLEMENT

TO

A GUIDE

TO

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920

(Second Edition)

Containing all decisions on the Act reported between June 1921 and July 1922.

BY

W. E. WILKINSON, LL.D.(Lond.)

A Solicitor of the Supreme Court

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NOTE.

THIS Supplement (which incorporates and supersedes that published in January last) deals with all decisions on the Increase of Rent and Mortgage Interest (Restrictions) Act 1920, reported between June 1921 and July 1922, and with the Second Edition of the "Guide," published in June 1921, contains the whole of the law on the subject arranged under appropriate headings.

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August 1922.

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Chapter I.—Application of the Act.

Premises within the Act.

Dwelling-houses.

Page 4, line 12. Where s. 12 (2) refers to "a house or a part of a house let as a separate dwelling," the words "let as a separate dwelling" only qualify "part of a house" and not "house." In other words, there are two different subject-matters to which the Act applies: (1) a house, and (2) a part of a house let as a separate dwelling (*Woodifield* v. *Bond*, (1921) W.N. 309; see also *Schmit* v. *Christy* (1922), 38 T.L.R. 519, per Swift, J., at p. 521).

Page 4, line 22. *Phillips* v. *Barnett* (decision of Divisional Court, affirmed by Court of Appeal ([1922] 1 K.B. 222).

Page 6, line 4. *Roberts* v. *Poplar Assessment Committee* (decision of Divisional Court, affirmed by Court of Appeal ((1921), 37 T.L.R. 980), but reversed by the House of Lords (sub-nom. *Poplar Assessment Committee* v. *Roberts* ((1922), 127 L.T. 99).

Page 6, line 10. See *Phillips* v. *Barnett* (*supra*).

Page 6, line 11. Section 12 (6) does not, of course, override the provisions of s. 13 (3) with reference to business premises (*Jones* v. *Blackall* (1922), *Estates Gazette*, March 18, p. 369).

Business Premises.

Page 7, line 6. See also *Godsell and Sons, Limited* v. *Payne* ((1921) *Estates Gazette*, Nov. 19, p. 695).

Page 7, line 7. See also *Duke of Richmond and Others* v. *Dewar and Others and the Cadogan Hotel Company Limited* (1921), 38 T.L.R. 151; *McQuillan* v. *Clinton* (1921), 55 I.L.T. 143.

Page 7, line 19. In *Earle* v. *Bradley* ((1921) *Estates Gazette*, Oct. 8, 1921, p. 487), Russell, J., held that a house used as a boarding-house was business premises and not a dwelling-house protected by the Act, the test being the "dominant purpose" for which the premises are used.

Page 7, line 31. See also *Greig* v. *Francis and Campion, Limited* ((1922), 38 T.L.R. 519).

Page 8, line 20. See also *Duke of Richmond and Others* v. *Dewar and Others and the Cadogan Hotel Company, Limited* (*supra*) (premises used by a hotel company as a sleeping apartment for their staff held to be a dwelling-house and not business premises);

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*The references are to the Second Edition of the "Guide to the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920."

Colls v. *Parnham* ((1922), 1 K.B. 325) (house used partly as a boarding-house held to be a dwelling-house and not business premises) ; *Tuckfield and Others* v. *Hayes* ((1921), *Estates Gazette*, Nov. 26, p. 743) ; *Couch* v. *Bamford* ((1922), *Estates Gazette*, July 15, p. 91, licensed premises).

Page 8, line 32. See also *Necchi* v. *Cranchi* ((1921), 37 T.L.R. 934) (*infra*).

PREMISES NOT WITHIN THE ACT.

Attendance.

Page 9, line 16. Services constitute " attendance " within the meaning of s. 12 (2) (i) of the Act (*Nye* v. *Davis* ([1922], 2 K.B. 56). This case, where a flat was let at an inclusive rent, and it was held that the Act did not apply, should be compared with *Hocker* v. *Solomon* ((1922), 91 L.J. Ch. 8), where the rent was not inclusive, but a separate payment was made for attendance, and it was held that the Act did apply. See also *King* v. *Millen*, (1922) W.N. 263.

Furnished Premises.

Page 9, line 27. In *Necchi* v. *Cranchi* (*supra*), it was held that the Act did not apply where business premises were let at a rent which included the use of furniture.

Reconstructed Premises.

Page 11, line 24. *Phillips* v. *Barnett* (decision of Divisional Court, affirmed by Court of Appeal ((1922) 1 K.B. 222). See also *McLeod* v. *Helliwell* ((1922), *Estates Gazette*, April 15, p. 523 ; *Greenall* v. *Baker* (*ibid*)).

Rent Less than Two-thirds of the Rateable Value.

Page 13, line 13. See *Veale* v. *Cabezas* ((1921) W.N. 311, *infra*, p. 6).

Page 13, line 24. But see now *Woodifield* v. *Bond* ((1921) W.N. 309), (*infra*, p. 10).

COTTAGES OCCUPIED BY EMPLOYÉS.

Page 14, line 38. See also *Davies* v. *McClintock* ((1922) *Estates Gazette*, Jan. 28, p. 127 ; *Payne* v. *Robinson* (*ibid.*), *Beck* v. *Woods* ((1922), *Estates Gazette*, April 15, p. 523) ; *Roberts and Others* v. *Penmaenmawr and Welsh Granite Co., Limited* ((1922) *Estates Gazette*, June 3, p. 798).

DEFINITIONS—" LANDLORD " AND " TENANT."

Page 15, line 12. Definition of " Landlord," *cf. Altiman* v. *Longbottom* ((1922), *Estates Gazette*, April 15, p. 523). The word " landlord " in the sub-section, of course, includes a tenant who has sub-let to a sub-tenant (*Logan* v. *Fair* ((1922) 1 Sc.L.T. 2).

But the context may require that the term "landlord" shall be understood in a restricted sense, *e.g.*, s. 5 (1) (*f*) (*Squier* v. *Hore* (1921), 38 T.L.R. 38, *infra*, p. 9).

Page 16, line 11. See also *Rock* v. *Burke* ((1922), 56 I.L.T. and S.J. 24).

THE EFFECT OF THE ACT ON VALUATION FOR RATING PURPOSES.

Page 16, line 34. The decision of the Court of Appeal in *Roberts* v. *Poplar Assessment Committee* ((1921), 37 T.L.R. 980), affirming a decision of a Divisional Court, has been reversed by the House of Lords (*sub. nom. Poplar Assessment Committee* v. *Roberts* ((1922), 127 L.T. 99), so that in arriving at the valuation of a dwelling-house to which the Act applies, the highest gross value that can be put upon it is not limited to the "standard rent" plus the highest increase of rent provided by s. 2 (1) of the Act.

CHAPTER II.—INCREASE OF RENT.

RESTRICTIONS ON INCREASING RENT.

Page 17, line 11. Agreement to survive the Act, see *City of London Real Property Co., Limited* v. *Hooker* ((1922), *Estates Gazette*, Feb. 25, p. 263).

STANDARD RENT.

Page 19, line 21. See *Veale* v. *Cabczas* ((1921) W.N. 311, *infra*).

Page 19, line 32. *Glossop and Another* v. *Ashley* (decision of McCardie, J., affirmed by Court of Appeal ((1921, 37 T.L.R. 827).

Page 19, line 40. See *Roberts* v. *Poplar Assessment Committee* (*supra*).

Page 20, line 1. See *Glossop and Another* v. *Ashley* (*supra*).

Page 20, line 28. See *Glossop and Another* v. *Ashley* (*supra*).

Page 20, line 29. See *Roberts* v. *Poplar Assessment Committee* (*supra*).

Page 20, line 43. See *Glossop and Another* v. *Ashley* ((1921), 37 T.L.R. 827, per Bankes, L.J., at p. 829).

Page 21, line 4. See *Glossop and Another* v. *Ashley* ((1921), 37 T.L.R. 827, per Bankes, L.J., at p. 829 ; per Atkin, L.J., at p. 830).

Page 21, line 6. A County Court Judge has no jurisdiction to decide the mere abstract question of the amount of the standard rent, where that is the sole question submitted to him (*Broomhall* v. *Property Agents and Owners, Limited* ([1922] 1 K.B. 311).

Page 22, line 8. *Phillips* v. *Barnett* (decision of Divisional Court, affirmed by Court of Appeal ([1922] 1 K.B. 222).

Page 22, after line 20, add :

(12) A house was let in 1914 at an annual rent of £18, plus 2s. a week (£5 4s. per annum) for the services of the housekeeper. The standard rent is £23 4s. (*L. H. Woods & Co., Limited* v. *City and West End Properties, Limited* (1921), 38 T.L.R. 98).

(13) The lessee of a house let on lease for 99 years expiring September, 1919, was in August, 1914, paying a ground rent of £12 12s., and had sub-let the house in separate tenements to sub-tenants whose aggregate rents amounted to £1 4s. 6d. a week. The rateable value of the house was £26. In September, 1918, the lessee sub-let the house as a whole at a weekly rent of £1 3s. There was no evidence of the rent other than the ground rent at which the house as a whole was let before August, 1914. The standard rent is the rent at which the house was let in September, 1918, being the rent at which the house as a whole was first let after August, 1914. The ground rent could not be the standard rent, for it was less than two-thirds of the rateable value, and the aggregate weekly rents of £1 4s. 6d. could not be the standard rent, for the house as a whole was never let at that figure (*Veale* v. *Cabezas* (1921) W.N. 311).

APPORTIONMENT OF RENT OR RATEABLE VALUE.

Page 23, line 8. *Sinclair* v. *Powell* (decision of Divisional Court, affirmed on other grounds by Court of Appeal ([1922] 1 K.B. 393). See also *Gimsburg* v. *Bodingstone* ((1921), *Estates Gazette*, Dec. 24, p. 874).

PERMITTED INCREASES IN RENT.

For Increase of Rates—Compounding Landlord.

Page 26, line 36. *Nicholson* v. *Jackson* (decision of Court of Appeal, affirmed by House of Lords ((1921), 125 L.T. 802)).

A Further Addition.

Page 28, line 28. " Good and tenantable repair " (cf. *Woodifield* v. *Bond* ([1922] 2 Ch. 40, per Sargant, J., at p. 50).

DETERMINATION OF QUESTIONS AS TO INCREASE OF RENT.

Page 30, line 35. " Final and Conclusive." See also *Keep* v. *Wallis & Starkie* ((1922), *Estates Gazette*, March 4, p. 299). An application under s. 2 (6) may also be made by the sanitary authority (*Glasgow Corporation* v. *Mickel* (1922) 59 Sc.L.R. 153). Though a County Court Judge has power to decide whether, in view of the standard rent, an increased rent is permissible under the Act, yet he has no jurisdiction to decide the more abstract question of the amount of the standard rent where that is the sole question submitted to him (*Broomhall* v. *Property Agents and Owners, Limited* ([1922] 1 K.B. 311). It has been held by the Irish Court that in proceedings under the Act where a " question " arises between

the landlord and the tenant as to the amount of rent lawfully due, an order for possession cannot be made pending the determination of the "question" in the manner prescribed by s. 2 (6) of the Act (*Dun Laoghaire Urban District Council* v. *Moran*, [1921] 2 Ir.R. 404).

LIMITATION AS TO PERMITTED INCREASES IN RENT.

Page 31, line 12. *Glossop and Another* v. *Ashley* (decision of McCardie, J., affirmed by Court of Appeal ((1921), 37 T.L.R. 827)).

Page 31, line 14. See also *Newell* v. *Crayford Cottage Society* ([1922], 1 K.B. 656); *Shuter* v. *Hersh* (1922) 1. K.B. 438, *infra*, *p.* 8.

Notice of Increase.

Page 31, line 25. Increased rent cannot be recovered even on the granting of a new tenancy without compliance with s. 3 (2) of the Act, so that the tenancy must first be determined to comply with s. 3 (1) and then the statutory notice must be given (*Schmit* v. *Christy* (1922), 38 T.L.R. 627).

Dates.

Page 31, line 30. The dates in the notice are matters of substance, and if incorrectly stated, the notice is invalid (*Peizer* v. *Federman* ((1921), 38 T.L.R. 54)).

Notice of Increase served concurrently with Notice to Quit.

Page 32, line 6. It has been decided that there is nothing to prevent the notice of increase from being served concurrently with the notice to quit, the increase to take effect immediately on the expiration thereof (*Hill* v. *Hasler* (1921) 3 K.B. 643).

Particulars must be precisely stated.

Page 32, line 22. A notice of increase must be correct not only in form, but also in substance, and the particulars must be precisely stated. In *Penfold and Another* v. *Newman* ([1922] 1 K.B. 645), it was held that a notice in which there was a mistake in the percentage of increase under s. 2 (1) (*c*) was invalid.

Page 32, line 41. *Glossop and Another* v. *Ashley* (decision of McCardie, J., affirmed by Court of Appeal ([1922] 1 K.B. 1).

Validity of Notice.

Page 32, line 45. For a case in which it was held that in consequence of his affidavit under O. XIV the tenant was estopped from alleging that a notice of increase was bad, see *Hopper* v. *Hart* ((1922) *Estates Gazette*, May 6, p. 629).

Notice of Further Increase.

Page 33, line 25. It has been decided that where a tenant is holding over as a statutory tenant under the Act and notice to quit has been served upon him, there is no necessity to give a further notice to quit before again increasing the rent, unless an agreement for a fresh tenancy has been arrived at (*Shuter* v. *Hersh* ([1922] 1 K.B. 438).

Suspension of Increased Rent if House not in a Reasonable State of Repair.

Page 33, line 35. See *Glasgow Corporation* v. *Mickel* ((1922), 59 Sc.L.R. 153).

Page 34, line 17. The High Court has no jurisdiction to order suspension (*X Rays, Limited* v. *Armitage*, (1922) W.N. 27).

Chapter III.—Statutory Tenancy.

Creation of Tenancy.

Page 35, line 26. The Act applies to a tenancy for a term certain and prevents the landlord from exercising his common law right of re-entry on the expiry of the term (*Cruise and Another* v. *Terrell* (1922), 38 T.L.R. 379).

Conditions of Tenancy.

Page 37, line 20. *Remmington* v. *Larchin* is reported [1921] 3 K.B. 404.

Double Value.

Page 38, line 18. See *Hopper* v. *Hart* ((1922), *Estates Gazette*, May 6, p. 629).

Acceptance of Rent after Notice to Quit.

Page 40, line 30. It has been decided that by accepting rent for a period exceeding three months from the expiration of the notice to quit, a landlord does not waive his rights under the notice (*Town Properties Development Company, Limited* v. *Winter and Another* (1921), 37 T.L.R. 979 ; see also *Shuter* v. *Hersh* (*supra*).

The Position of Sub-Tenants.

Page 42, line 38. Where a tenant surrenders his tenancy, but the sub-tenant, being entitled to continue in occupation under the Act, refuses to quit, the tenant is not liable to the landlord for use and occupation (*Reynolds* v. *Bannerman* [1922] 1 K.B. 719).

Chapter IV.—Restriction on Right to Possession.

Conditions on which an Order or Judgment for the Recovery of Possession may be made or given.

Page 45, line 15. See *Upjohn* v. *Macfarlane*, (1922) 2 Ch. 256.

Rent in Arrear.

Page 45, line 39. See *Couch* v. *Bamford* (1922), *Estates Gazette*, July 15, p. 91.

Page 46, line 7. See also *Upjohn* v. *Macfarlane* (*supra*).

Dwelling-house required by Landlord for Occupation.

Section 5 (1) (*d*).

Page 49, line 2. The word "landlord" in the sub-section, of course, includes a tenant who has sub-let to a sub-tenant (see *Logan* v. *Fair*, (1922) 1 Sc.L.T. 2).

Page 49, line 34. A person under contract of service with the landlord, but not actually working, is not a "person in his whole-time employment" (*Spencer* v. *Fox*, (1922) W.N. 141).

Page 50, line 12. In *Colls* v. *Parnham* ([1922], 1 K.B. 325) it was held that a house used partly as a boarding-house was a dwelling-house and not business premises (*Tompkins* v. *Rogers* [1921] 2 K.B. 94, not followed). But cf. *Earle* v. *Bradley* (*supra*, p. 3).

Page 50, line 28. See also *McQuillan* v. *Clinton* ((1921), 55 I.L.T. 143).

Section 5 (1) (*f*).

Page 51, line 20. The widow of an ex-service man is not entitled to the benefit of s. 5 (1) (*f*) (*Squier* v. *Hore* (1921), 38 T.L.R. 38).

Page 53, line 40. See also *Lees* v. *Duley* ((1921) W.N. 283).

Alternative Accommodation.

Page 55, line 9 (*Roberts and Others* v. *Penmaenmawr and Welsh Granite Co. Limited* ((1922), *Estates Gazette*, June 3, p. 798).

Page 55, line 14. See also *Lees* v. *Duley* ((1921) W.N. 283).

Page 55, line 28. It has been held in Ireland that a house without a shop attached thereto is not sufficient alternative accommodation for a house with a shop attached (*Irvine* v. *Nelson* (1922), 56 I.L.T. 107).

Page 56, line 8. In considering the question of alternative accommodation, the Court may have regard to the fact that the tenant's occupation is not continuous, *e.g.*, where the house is only used occasionally (*Cruise and Another* v. *Terrell* (1921), 37 T.L.R. 936 ; affirmed, ([1922] 1 K.B. 664).

Material Date.

Page 56, line 14. The words of s. 5 (1) (*d*) refer only to the time when the order for possession is made, not to the time when the order becomes operative, so that the Court cannot make an order for possession at a future date, on the landlord's proving that alternative accommodation will *then* be available. The proper course in such a case would be for the Judge to adjourn the case until the future date to see if the alternative accommodation will then be available (*Lees* v. *Duley*, (1921) W.N. 283).

Production of Certificate of County Agricultural Committee.

Page 59, line 21. The certificate *is* conclusive, and when produced it ought to be acted upon. The sub-section means that the way in which the Court is to be satisfied is by the production of the certificate (*Smith* v. *Primavesi*, (1921) W.N. 291).

Page 59, line 39. *Cf. Squier* v. *Hore* ((1921), 38 T.L.R. 38).

Page 60, line 16. See also *Cruise and Another* v. *Terrell* ((1921), 37 T.L.R. 936); *McQuillan* v. *Clinton* ((1921), 55 I.L.T. 143).

Chapter V.—Further Restrictions and Obligations on Landlords.

Restriction on Levy of Distress for Rent.

Page 64, line 17. On the hearing of an application for leave to levy a distress, where the tenant alleges that there is a reasonable and *bonâ fide* dispute as to the amount of rent due, based on the provisions of the Act, the Court is bound to inquire into the defences raised, although the tenant admits that his inability to pay is not occasioned by reason of circumstances directly or indirectly attributable to the war (*Townsend* v. *Charlton* (1922), 38 T.L.R. 397).

Restrictions on Premiums.

Page 65, line 36. See *Crang* v. *Leman* ((1921) The Times, Nov. 10).

Page 66, line 9. *Remmington* v. *Larchin* is reported [1921] 3 K.B. 404.

Chapter VI.—Mortgage and Mortgagor.

Mortgages to which the Act applies.

Page 74, line 15. It has now been decided that the Act applies to a mortgage even where the mortgagor is himself in occupation, Sargant, J., holding that, where s. 12 (2) refers to

"a house or a part of a house let as a separate dwelling," the words "let as a separate dwelling" only qualify "part of a house" and not "house." In other words, there are two different subject-matters to which the Act applies: (1) a house, and (2) a part of a house let as a separate dwelling (*Woodifield* v. *Bond* (1921) W.N. 309). A different view has been taken in Ireland (*Re Hegan*, (1921) 1 Ir. R. 189).

RESTRICTIONS ON INCREASING MORTGAGE INTEREST.

Page 75, line 2. See *Hollands* v. *Cooper* ((1921) W.N. 298).

STANDARD RATE OF INTEREST.

Page 75, after line 19, add: See also *Hollands* v. *Cooper* (*supra*).

PERMITTED INCREASE IN RATE OF MORTGAGE INTEREST.

Page 76, after line 5, add: See *Hollands* v. *Cooper* (*supra*).

Page 76, line 11. As to the effect of the repeal of the 1915 Act on increases already made, see *Hollands* v. *Cooper* (*supra*).

RESTRICTION ON CALLING IN OF MORTGAGES.

Page 78, line 27. Interest in arrear on mortgage, see *Newall* v. *Irving* (1922), *Estates Gazette*, April 8, p. 478)

Page 78, line 27. In *Hollands* v. *Cooper* ((1921) W.N. 298) a mortgage of premises falling within the Act and also within the Act of 1915, which had on August 4th, 1914, already been called in, bore interest at that date at the rate of 4½ per cent., which rate was increased to 6 per cent. in September, 1914. It was held by Astbury, J., that as from March 25th, 1920, interest was only recoverable so far as it did not exceed the rate of permitted increase on 4½ per cent., that being the standard rate, and that the mortgagee could not take steps to enforce his security while interest was being paid at 5½ per cent.

Page 78, line 35. The object of s. 7 of the Act is to secure that during the suspension of his right to recover his principal, the mortgagee's rights shall not be otherwise prejudiced, and the general position shall be kept in *statu quo* (*Woodifield* v. *Bond*, [1922] 2 Ch. 40, per Sargant, J., at p. 50). The "proper state of repair" in which a mortgagor is required to maintain the mortgaged premises in order to obtain the benefit of s. 7, must be measured by the general condition of the property at the date of the mortgage and must not be extended beyond the preservation of the property in a state corresponding with what existed at that date (*Woodifield* v. *Bond* (*supra*)).

Chapter VII.—Recovery of Sums Wrongly Paid.

Page 81, line 16. See *Schmit* v. *Christy* ([1922] 2 K.B. 60)).

Chapter IX.—The Expiration of the Act.

Page 85, line 25. See also *Town Properties Development Company, Limited*, v. *White and Another* ((1921), 37 T.L.R. 979).

Chapter X.—Procedure.

Page 86, line 12. The Lord Chancellor has made the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1921, dated June 3rd, 1921 (S.R.O. 1921, No. 932, L. 12), slightly amending Rule 15 (1) of the Rules of 1920 relating to fees payable in the case of an order giving leave to distrain.

Chapter XI.—Application of the Act to Scotland and Ireland.

Page 88, line 17, add: *M'Garritty* v. *Assessor for Lanark* ((1921), 58 Sc.L.R. 422).

Page 89, line 14. See *Glasgow Corporation* v. *Mickel* ((1922), 59 Sc.L.R. 153).

SUPPLEMENT

TO

A GUIDE

TO

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920

(Second Edition)

Containing all decisions on the Act reported between 18th June and 31st December 1921

BY

W. E. WILKINSON, LL.D.(Lond.)

A Solicitor of the Supreme Court

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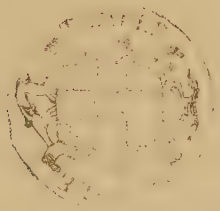

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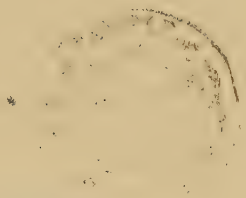

NOTE.

THIS Supplement deals with all decisions on the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, reported between 18th June and 31st December 1921, and with the Second Edition of the "Guide," published in June 1921, contains the whole of the law on the subject arranged under appropriate headings.

W. E. WILKINSON.

28, BEDFORD ROW, W.C.1.

5th January, 1922.

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Shuter v. *Hersh*, 5, 6.

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Smith v. *Primavesi*, 7.

Squier v. *Hore*, 4, 7.

Tompkins v. *Rogers*, 6.

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Woodifield v. *Bond*, 8.

Woods (L. H.) & Co. Limited v. *City and West End Properties, Limited*, 4.

Chapter I.—Application of the Act.

Premises within the Act.

Dwelling-houses.

Page 4, line 22. *Phillips* v. *Barnett* (decision of Divisional Court, affirmed by Court of Appeal ((1921), 38 T.L.R. 39)).

Page 6, line 4. *Roberts* v. *Poplar Assessment Committee* (decision of Divisional Court, affirmed by Court of Appeal ((1921), 37 T.L.R. 980)).

Page 6, line 10. See *Phillips* v. *Barnett* (*supra*).

Business Premises.

Page 6, line 6. See also *Godsell and Sons, Limited* v. *Payne* ((1921), *Estates Gazette*, Nov. 19, p. 695).

Page 7, line 6. See *Roberts* v. *Poplar Assessment Committee* (*supra*).

Page 7, line 7. See also *Duke of Richmond and Others* v. *Dewar and Others and the Cadogan Hotel Company, Limited* ((1921), 38 T.L.R. 151); *McQuillan* v. *Clinton* ((1921), 55 I.L.T. 143).

Page 7, line 19. In *Earle* v. *Bradley* ((1921), *Estates Gazette*, Oct. 8, 1921, p. 487), Russell, J., held that a house used as a boarding-house was business premises and not a dwelling-house protected by the Act, the test being the "dominant purpose" for which the premises are used.

Page 8, line 20. See also *Duke of Richmond and Others* v. *Dewar and Others and the Cadogan Hotel Company, Limited* (*supra*) (premises used by a hotel company as a sleeping apartment for their staff held to be a dwelling-house and not business premises); *Colls* v. *Parnham* ((1921) W.N. 358) (house used partly as a boarding-house held to be a dwelling-house and not business premises); *Tuckfield and Others* v. *Hayes* ((1921), *Estates Gazette*, Nov. 26, p. 743).

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Page 20, line 29. See *Roberts* v. *Poplar Assessment Committee* (*supra*).

Page 20, line 43. See *Glossop and Another* v. *Ashley* ((1921), 37 T.L.R. 827, per Bankes, L.J., at p. 829).

Page 21, line 4. See *Glossop and Another* v. *Ashley* ((1921), 37 T.L.R. 827, per Bankes, L.J., at p. 829 ; per Atkin, L.J., at p. 830).

Page 21, line 6. A County Court Judge has no jurisdiction to decide the mere abstract question of the amount of the standard rent, where that is the sole question submitted to him (*Broomhall* v. *Property Agents and Owners, Limited* (1921), 38 T.L.R. 56).

Page 22, line 8. *Phillips* v. *Barnett* (decision of Divisional Court, affirmed by Court of Appeal ((1921), 38 T.L.R. 39)).

Page 22, after line 20, add :

(12) A house was let in 1914 at an annual rent of £18, plus 2s. a week (£5 4s. per annum) for the services of the housekeeper. The standard rent is £23 4s. (*L. H. Woods & Co., Limited* v. *City and West End Properties, Limited* (1921), 38 T.L.R. 98).

(13) The lessee of a house let on lease for 99 years expiring September, 1919, was in August, 1914, paying a ground rent of

£12 12s., and had sub-let the house in separate tenements to sub-tenants whose aggregate rents amounted to £1 4s. 6d. a week. The rateable value of the house was £26. In September, 1918, the lessee sub-let the house as a whole at a weekly rent of £1 3s. There was no evidence of the rent other than the ground rent at which the house as a whole was let before August, 1914. The standard rent is the rent at which the house was let in September, 1918, being the rent at which the house as a whole was first let after August, 1914. The ground rent could not be the standard rent, for it was less than two-thirds of the rateable value, and the aggregate weekly rents of £1 4s. 6d. could not be the standard rent, for the house as a whole was never let at that figure (*Veale* v. *Cabezas* (1921) W.N. 311).

APPORTIONMENT OF RENT OR RATEABLE VALUE.

Page 23, line 8. *Sinclair* v. *Powell* (decision of Divisional Court, affirmed by Court of Appeal ((1921), 152 L.T.Jo. 418)). See also *Gimsburg* v. *Bodingstone* ((1921), *Estates Gazette*, Dec. 24, p. 874).

PERMITTED INCREASES IN RENT.

For Increase of Rates—Compounding Landlord.

Page 26, line 36. *Nicholson* v. *Jackson* (decision of Court of Appeal, affirmed by House of Lords ((1921), 125 L.T. 802)).

DETERMINATION OF QUESTIONS AS TO INCREASE OF RENT.

Page 30, line 35. Though a County Court Judge has power to decide whether, in view of the standard rent, an increased rent is permissible under the Act, yet he has no jurisdiction to decide the mere abstract question of the amount of the standard rent where that is the sole question submitted to him (*Broomhall* v. *Property Agents and Owners, Limited* (1921), 38 T.L.R. 56).

LIMITATION AS TO PERMITTED INCREASES IN RENT.

Page 31, line 12. *Glossop and Another* v. *Ashley* (decision of McCardie, J., affirmed by Court of Appeal ((1921), 37 T.L.R. 827)).

Page 31, line 14. See also *Shuter* v. *Hersh* ((1921), 38 T.L.R. 127, *infra*, p. 6; *Newell* v. *Crayford Cottage Society, Limited* ((1921), *Estates Gazette*, Aug. 13, p. 229).

Notice of Increase.

Dates.

Page 31, line 30. The dates in the notice are matters of substance, and, if incorrectly stated, the notice is invalid (*Peizer* v. *Federman* ((1921), 38 T.L.R. 54)).

Notice of Increase served concurrently with Notice to Quit.

Page 32, line 6. It has been decided that there is nothing to prevent the notice of increase from being served concurrently with the notice to quit, the increase to take effect immediately on the expiration thereof (*Hill* v. *Hasler* (1921) 3 K.B. 643).

Particulars must be precisely stated.

Page 32, line 22. A notice of increase must be correct not only in form, but also in substance, and the particulars must be precisely stated. In *Penfold and Thomas* v. *Newman* ((1921) W.N. 350), it was held that a notice in which there was a mistake in the percentage of increase was invalid.

Page 32, line 41. *Glossop and Another* v. *Ashley* (decision of McCardie, J., affirmed by Court of Appeal ((1921), 37 T.L.R. 827)).

Notice of Further Increase.

Page 33, line 25. It has been decided that where a tenant is holding over as a statutory tenant under the Act and notice to quit has been served upon him, there is no necessity to give a further notice to quit before again increasing the rent, unless an agreement for a fresh tenancy has been arrived at (*Shuter* v. *Hersh* (1921), 38 T.L.R. 127).

Chapter III.—Statutory Tenancy.

Conditions of Tenancy.

Page 37, line 20. *Remmington* v. *Larchin* is reported [1921] 3 K.B. 404.

Acceptance of Rent after Notice to Quit.

Page 40, line 30. It has been decided that by accepting rent for a period exceeding three months from the expiration of the notice to quit, a landlord does not waive his rights under the notice (*Town Properties Development Company, Limited*, v. *Winter and Another* (1921), 37 T.L.R. 979 ; see also *Shuter* v. *Hersh* (1921), 38 T.L.R. 127).

Chapter IV.—Restriction on Right to Possession.

Conditions on which an Order or Judgment for the Recovery of Possession may be made or given.

Dwelling-house required by Landlord for Occupation.

Section 5 (1) (*d*).

Page 50, line 12. In *Colls* v. *Parnham* ((1921) W.N. 358) it was held that a house used partly as a boarding-house was a dwelling-house and not business premises (*Tompkins* v. *Rogers* [1921] 2 K.B. 94, not followed). But cf. *Earle* v. *Bradley* (*supra*, p. 3).

Page 50, line 28. See also *McQuillan* v. *Clinton* ((1921), 55 I.L.T. 143).

Section 5 (1) (*f*).

Page 51, line 20. The widow of an ex-service man is not entitled to the benefit of s. 5 (1) (*f*) (*Squier* v. *Hore* (1921), 38 T.L.R. 38).

Page 53, line 40. See also *Lees* v. *Duley* ((1921), W.N. 283).

ALTERNATIVE ACCOMMODATION.

Page 55, line 14. See also *Lees* v. *Duley* ((1921), W.N. 283).

Page 56, line 8. In considering the question of alternative accommodation, the Court may have regard to the fact that the tenant's occupation is not continuous, *e.g.*, where the house is only used occasionally (*Cruise and Another* v. *Terrell* (1921), 37 T.L.R. 936.

Material Date.

Page 56, line 14. The words of s. 5 (1) (*d*) refer only to the time when the order for possession is made, not to the time when the order becomes operative, so that the Court cannot make an order for possession at a future date, on the landlord's proving that alternative accommodation will *then* be available. The proper course in such a case would be for the Judge to adjourn the case until the future date to see if the alternative accommodation will then be available (*Lees* v. *Duley* (1921) W.N. 283).

Production of Certificate of County Agricultural Committee.

Page 59, line 21. The certificate *is* conclusive, and when produced it ought to be acted upon. The sub-section means that the way in which the Court is to be satisfied is by the production of the certificate (*Smith* v. *Primavesi* (1921) W.N. 291).

Page 59, line 39. *Cf. Squier* v. *Hore* ((1921), 38 T.L.R. 38).

Page 60, line 16. See also *Cruise and Another* v. *Terrell* ((1921), 37 T.L.R. 936); *McQuillan* v. *Clinton* ((1921), 55 I.L.T. 143).

CHAPTER V.—FURTHER RESTRICTIONS AND OBLIGATIONS ON LANDLORDS.

RESTRICTIONS ON PREMIUMS.

Page 65, line 36. See *Crang* v. *Leman* ((1921) The Times, Nov. 10).

Page 66, line 9. *Remmington* v. *Larchin* is reported [1921] 3 K.B. 404.

CHAPTER VI.—MORTGAGEE AND MORTGAGOR.

MORTGAGES TO WHICH THE ACT APPLIES.

Page 74, line 15. It has now been decided that the Act applies to a mortgage even where the mortgagor is himself in occupation, Sargant, J., holding that, where s. 12 (2) refers to "a house or a part of a house let as a separate dwelling," the

words "let as a separate dwelling" only qualify "part of a house" and not "house." In other words, there are two different subject-matters to which the Act applies: (1) a house, and (2) a part of a house let as a separate dwelling (*Woodifield* v. *Bond* (1921) W.N. 309). A different view has been taken in Ireland (*Re Hegan*, (1921) 1 Ir. R. 189).

RESTRICTIONS ON INCREASING MORTGAGE INTEREST.

Page 75, line 2. See *Hollands* v. *Cooper* ((1921) W.N. 298).

STANDARD RATE OF INTEREST.

Page 75, after line 19, add: See also *Hollands* v. *Cooper* (*supra*).

PERMITTED INCREASE IN RENT OF MORTGAGE INTEREST.

Page 76, after line 5, add: See *Hollands* v. *Cooper* (*supra*).

Page 76, line 11. As to the effect of the repeal of the 1915 Act on increases already made, see *Hollands* v. *Cooper* (*supra*).

RESTRICTION ON CALLING IN OF MORTGAGES.

Page 78, line 27. In *Hollands* v. *Cooper* ((1921), W.N. 298) a mortgage of premises falling within the Act and also within the Act of 1915, which had on August 4th, 1914, already been called in, bore interest at that date at the rate of 4½ per cent., which rate was increased to 6 per cent. in September, 1914. It was held by Astbury, J., that as from March 25th, 1920, interest was only recoverable so far as it did not exceed the rate of permitted increase on 4½ per cent., that being the standard rate, and that the mortgagee could not take steps to enforce his security while interest was being paid at 5½ per cent.

CHAPTER IX.—THE EXPIRATION OF THE ACT.

Page 85, line 25. See also *Town Properties Development Company, Limited* v. *White and Another* ((1921), 37 T.L.R. 979).

CHAPTER X.—PROCEDURE.

Page 86, line 12. The Lord Chancellor has made the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1921, dated June 3rd, 1921 (S.R.O. 1921, No. 932, L. 12), slightly amending Rule 15 (1) of the Rules of 1920 relating to fees payable in the case of an order giving leave to distrain.

CHAPTER XI.—APPLICATION OF THE ACT TO SCOTLAND AND IRELAND.

Page 88, line 17, add: *M'Garritty* v. *Assessor for Lanark* ((1921), 58 Sc.L.R. 422).